

No. 2031

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**UNITED STATES CIRCUIT COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT.**

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AUGUST E. MUENTER, as Collector of Internal  
Revenue of the United States for the First Col-  
lection District of California,

Plaintiff in Error,

vs.

THE UNION TRUST COMPANY OF SAN FRAN-  
CISCO (a Corporation), as Trustee, Under the  
Trust Declared by the Last Will of JOHN J.  
VALENTINE, and EDWARD C. VALENTINE,  
ETHEL STEIN VALENTINE, J. J. VALEN-  
TINE, Jr., WILLIAM GEORGE VALENTINE,  
DUDLEY B. VALENTINE, ELIZA R. VAL-  
ENTINE and PHILIP C. VALENTINE,

Defendants in Error.

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**TRANSCRIPT OF RECORD.**

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Upon Writ of Error to the United States Circuit  
Court for the Northern District of California.

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**FILED**

**OCT - 5 1911**



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FOR THE NINTH CIRCUIT.

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AUGUST E. MUENTER, as Collector of Internal Revenue of the United States for the First Collection District of California,

Plaintiff in Error,

vs.

THE UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee, Under the Trust Declared by the Last Will of JOHN J. VALENTINE, and EDWARD C. VALENTINE, ETHEL STEIN VALENTINE, J. J. VALENTINE, Jr., WILLIAM GEORGE VALENTINE, DUDLEY B. VALENTINE, ELIZA R. VALENTINE and PHILIP C. VALENTINE,

Defendants in Error.

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Upon Writ of Error to the United States Circuit Court for the Northern District of California.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys.**

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MARSHALL B. WOODWORTH and EDWARD LANDE, Esqs., Attorneys for Plaintiffs and Defendants in Error,  
519 California St., San Francisco, California.



*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee Under the Trust Declared by the Last Will of JOHN J. VALENTINE, and EDWARD C. VALENTINE, DUDLEY B. VALENTINE, ELIZABETH VALENTINE, PHILIP C. VALENTINE, and J. J. VALENTINE, Jr., ETHEL STEIN VALENTINE and WILLIAM GEORGE VALENTINE,

Plaintiffs,

vs.

JOHN C. LYNCH, Collector of Internal Revenue for the First District of California,  
Defendant.

**Complaint.**

Now, come the plaintiffs above named, and file this

their complaint against the defendant, and for cause of action allege:

I.

That at all the times herein mentioned, the plaintiff, Union Trust Company of San Francisco, was and now is a corporation, organized and existing under the laws of the State of California, with its principal place of business in the City and County of San Francisco.

That at all the times herein mentioned, the Union Trust Company of San Francisco was, and now is, the trustee under the trust declared by the Last Will and Testament of John J. Valentine, deceased, as hereinafter more particularly appears.

That at all the times hereinafter mentioned, the said plaintiffs, Edward C. Valentine, William George Valentine, Ethel Stein Valentine, Dudley B. Valentine, Eliza R. Valentine, Philip C. Valentine and J. J. Valentine, Jr., were, and now are, the [1\*] beneficiaries, under the trust declared by the said Last Will and Testament of John J. Valentine, deceased.

That at all the times herein mentioned, the defendant, John C. Lynch, was, and now is, the Collector of Internal Revenue for the First District of California.

II.

That one John J. Valentine died in the County of Alameda, State of California, on or about the 21st day of December, 1901, being a resident thereof at the time of his death, and leaving property therein, and leaving a Last Will and Testament, a copy of

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\*Page number appearing at foot of page of original certified Record.

which is hereto attached, and marked Exhibit "1," and made a part hereof; that proceedings were had and taken, in accordance with the laws of the State of California, for the probate of said Last Will and Testament, in the Superior Court of the State of California, for the County of Alameda, which proceedings were, and are, numbered 17723, and entitled, "In the Matter of the Estate of JOHN J. VALENTINE, deceased"; and that in said proceedings, on or about December 30, 1901, after the filing of the Last Will and Testament of the said decedent, the said Superior Court duly gave and made an order admitting said Last Will and Testament to probate, and appointed said Union Trust Company of San Francisco executor thereof, who thereafter duly qualified and continued to act as executor, until the close of the administration of said estate.

### III.

That after proceedings regularly had and taken in said probate proceedings, by an order of said Superior Court, duly given and made on the 11th day of March, 1903, the property of said estate was, by decree of distribution, distributed to Union Trust Company of San Francisco, as trustee under the trust declared by said Last Will and Testament, and included in said [2] property so distributed in trust to said Union Trust Company of San Francisco, as aforesaid, was personal property, to be held in trust for the following named beneficiaries, of the value set opposite their respective names, viz.:



To Edward C. Valentine, personal property of the value of . . . . .	\$17,502.91
William George Valentine . . . . .	17,502.91
Ethel Stein Valentine . . . . .	31,416.89
Dudley B. Valentine . . . . .	21,761.40
Eliza R. Valentine . . . . .	35,676.41
Philip C. Valentine . . . . .	31,038.41
J. J. Valentine, Jr. . . . .	17,502.91

Said personal property to be held, and is now being held, in trust, by said Union Trust Company of San Francisco, as such trustee, and the income thereon paid by said Union Trust Company of San Francisco to the said beneficiaries, until the youngest of said children (said Philip C. Valentine) shall have attained his majority (a copy of which said decree is hereto attached, marked Exhibit 2 and made a part hereof).

#### IV.

That Philip C. Valentine is the youngest of said children and will reach his majority on the 7th day of May, 1920, and not before.

That none of the said children and beneficiaries, hereinabove mentioned, have any vested interest whatsoever in any portion of said estate, save and except the income thereon.

That said income in each instance is of so small amount that the annuity value thereof, under the rules of the Internal Revenue Department, for the purpose of assessing taxes on legacies, is much less than \$10,000.00 and is, in fact, in the neighborhood of \$1,000.00. [3]



V.

That on the 16th day of May, 1903, the Collector of Internal Revenue for the First District of California, assuming and pretending to act under and by virtue of the provisions of the Act of Congress of June 13th, 1898, as amended by the Act of Congress of March 2d, 1901, and the rules and regulations in such cases made and provided, assessed the Union Trust Company of San Francisco an Internal Revenue Tax, aggregating the sum of \$1661.00, said tax being assessed upon the legacies distributed to said Union Trust Company of San Francisco, in trust, as above stated, for the said beneficiaries as follows:

To the legacy of \$17,502.91 in favor of Edward C. Valentine a legacy tax of \$131.27; to the legacy of \$17,502.91 in favor of William George Valentine a legacy tax of \$131.27; to the legacy of \$31,516.89 in favor of Ethel Stein Valentine the legacy tax of \$353.44; to the legacy of \$21,761.40 in favor of Dudley B. Valentine a legacy tax of \$163.21; to the legacy of \$35,676.41 in favor of Eliza R. Valentine a legacy tax of \$401.36; to the legacy of \$31,038.41 in favor of Philip C. Valentine a legacy tax of \$349.18; to the legacy of \$17,502.91 in favor of J. J. Valentine, Jr., the legacy tax of \$131.27; said legacy taxes aggregating the sum total, as above stated, of \$1661.00. (Reference is hereby made to the Assessment-book, of record in the office of the Collector of Internal Revenue for the First District of California.)

That previous to said assessment by said Collector of Internal Revenue, as aforesaid, and acting in compliance with the authority and instructions assumed

or pretended to be exercised by said Collector of Internal Revenue, said Union Trust Company of San Francisco, did, on the 29th day of April, 1903, file with the defendant, John C. Lynch, as Collector of Internal [4] Revenue, a notice in duplicate upon form No. 490, prescribed by the laws and regulations in and for the United States Internal Revenue Department (a copy of which said notice is herewith attached, marked Exhibit 3 and made a part hereof).

That thereafter, on April 30th, 1903, and previous to the assessment of said Internal Revenue Tax of \$1661.00 by said Collector of Internal Revenue, as aforesaid, and in compliance with the authority and instructions assumed or pretended to be exercised by said Collector of Internal Revenue, said Union Trust Company of San Francisco filed with the defendant, as Collector of Internal Revenue, on form No. 419 (approved December, 1901), Legacy Return, amended to conform to the instructions of said Collector of Internal Revenue and the officials of the Internal Revenue Department (a copy of which said Legacy Return as amended is hereunto attached, marked Exhibit No. 4 and made a part hereof), and also at the same time and under the same circumstances, as hereinbefore set forth, filed with said defendant, as Collector of Internal Revenue, on form No. 494, prescribed January 29th, 1902, supplemental to, and made a part of form 419, a Schedule of Stocks, bonds, notes, and other securities, and other personal property (a copy of which Schedule is hereto attached, marked Exhibit No. 5 and made a part hereof).

That before the said Collector of Internal Revenue or any of the officials of the Internal Revenue Department would accept said Legacy Return, the Union Trust Company of San Francisco was compelled by said defendant to amend its Legacy Return, as above stated, so as to read as per copy hereto attached, hereinabove referred to, and marked Exhibit No. 4, to which amended portion reference is herewith specifically made, and did so make and file said amended return, on April 30th, 1903, under [5] protest with the said defendant, said protest being set forth in said Amended Return.

That on May 22d, 1903, said defendant, as Collector of Internal Revenue for the First District of California, notified said Union Trust Company of San Francisco, in Form No. 455, that a tax, under the Internal Revenue Laws of the United States, amounting to \$1661.00, the same being a tax upon Legacies and Distributive Shares, had been assessed against said Union Trust Company of San Francisco, by the Commissioner of Internal Revenue, and transmitted to said defendant, as Collector of Internal Revenue for the First District of California, for collection, and demanded the payment of said tax of \$1661.00 (a copy of which notice is hereunto annexed and made a part hereof, and marked Exhibit No. 6).

That the originals of said Notice, Legacy Return as Amended, Schedule, and Notice of and Demand for Legacy Taxes assessed, with papers thereunto attached, are now on file in the office of the Collector of Internal Revenue, for the First District of California, and are hereby referred to.

## VI.

That thereafter and on May 27th, 1903, the Union Trust Company of San Francisco, so assessed as aforesaid by the said defendant, Collector of Internal Revenue for the First District of California, paid to the said defendant, as Collector of Internal Revenue for the First District of California, the sum of \$1661.00, and received duplicate receipts therefor (a copy of one of which is hereunto annexed and made a part hereof, and marked Exhibit No. 7), which said sum of \$1661.00 was paid by the said Union Trust Company of San Francisco to the defendant as Collector of Internal Revenue for the First District of [6] California, for and on behalf of the beneficiaries above named, and which said sum of \$1661.00 was paid under protest as aforesaid (a copy of which protest is hereunto annexed and made a part hereof, and marked Exhibit No. 8).

## VII.

That said assessment of said tax of \$1661.00, or any portion thereof, was not required by law, and was, and is, illegal and erroneous, and without authority of law, and that said payment of said sum of \$1661.00 was made by said Union Trust Company of San Francisco, under protest as aforesaid, and was, and is, illegal, and erroneous, and without authority of law, and said sum of \$1661.00 should be refunded and repaid to said Union Trust Company of San Francisco for and on behalf of the beneficiaries above named.

## VIII.

That all of the taxes, which have been collected by

the defendant, were collected upon the contingent interests of Edward C. Valentine, William George Valentine, Ethel Stein Valentine, Dudley B. Valentine, Eliza R. Valentine, Philip C. Valentine and J. J. Valentine, Jr., none of which interests had become vested prior to July 1, 1902, and none of which interests have, since said decree of distribution or since the death of John J. Valentine, as aforesaid, become vested, and none of which interests have at any time become vested in possession or enjoyment; that under the provisions of an Act of Congress of June 27, 1902, the Commissioner of Internal Revenue, upon proper application being made to him, is compelled to refund all of said taxes.

#### IX.

That heretofore and before the commencement of the present [7] suit, to wit, on the 13th day of June, 1903, said Union Trust Company of San Francisco presented to, and filed with, said John C. Lynch, as Collector of Internal Revenue, as aforesaid, a claim on blank form No. 46, revised April, 1901, of the United States Internal Revenue Department, under Series 7, Number 14, Revised, and series 7, No. 27, Supplement No. 1, for taxes improperly paid, or refundable under remedial statutes, etc., claiming that it was entitled to the refunding of the sum of \$1661.00 for taxes illegally and unlawfully and without authority of law assessed and collected from, and paid by it, said Union Trust Company of San Francisco, on behalf of the beneficiaries above named, and claiming further that said sum of \$1661.00 had been paid in contingent interests which had not yet vested



and which should be refunded for the reasons set forth in the said claim, which are therein and herein set forth, a copy of which said claim is on file in the office of the Collector of Internal Revenue, First District of California, reference to which is hereby made, and which is made a part hereof, and a copy of the same is hereto attached and made a part hereof and marked Exhibit No. 9.

#### X.

That said claim for refunding taxes collected was filed, as above stated, on the 13th day of June, 1903, and that said claim was thereafter, on the 22d day of June, 1903, forwarded by said defendant John C. Lynch, as Collector of Internal Revenue, to the Commissioner of Internal Revenue, for the decision of said Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Treasury established in pursuance thereof, but that said Commissioner of Internal Revenue had not, up to the filing of [8] this complaint, and has not since, decided or acted upon said claim, and said claim has neither been allowed nor disallowed by said Commissioner of Internal Revenue, and that more than six months from the date of the said appeal have now elapsed without a decision on said claim by said Commissioner of Internal Revenue, and that, according to the provisions of sections 3226 and 3227 of the Revised Statutes of the United States, said plaintiffs are entitled to bring this suit.

#### XI.

That said Acts of Congress of June 13th, 1898, and

March 2d, 1901, under which the said defendant, John C. Lynch, as Collector of Internal Revenue for the First District of California, assumed and pretended to act in assessing and collecting from the Union Trust Company of San Francisco said tax of \$1661.00, in the manner and form above set forth, have been repealed by the Act of Congress of April 12th, 1902, and that said repeal of said Act of Congress took effect July 1, 1902; that, in view of said repeal of said Acts of Congress and of the further fact that said John J. Valentine died on December 21, 1901, no legacy Internal Revenue Tax could be lawfully assessed and collected from the estate of John J. Valentine, deceased, or from the Union Trust Company of San Francisco, as executor or as trustee of the estate of John J. Valentine, deceased, or from the legatees or beneficiaries of said estate, for the reason that said legacy Internal Revenue Tax was, in any event, not due or payable, if due or payable at all, for one year after the death of the said testator, John J. Valentine, and the said John J. Valentine having died on December 21, 1901, at which time and long previous thereto, to wit, on July 1, 1902, said repeal of said Acts of Congress of June 13, 1898, and March [9] 2, 1901, became effective, no legacy Internal Revenue Tax was due or payable on May 16, 1903, at which time said defendant, as Collector of Internal Revenue, assessed, as above set forth, a legacy Internal Revenue Tax of \$1661, and, on May 27, 1903, collected said sum of \$1661.00 from said Union Trust Company of San Francisco as above set forth.

## XII.

That said Commissioner of Internal Revenue and defendant have refused and still refuse to refund said sum of \$1661.00, or any part thereof, and that the whole and every part thereof is still due and unpaid.

Wherefore, plaintiffs pray for judgment against said defendant for the sum of \$1661.00, together with interest at the rate of seven per cent per annum, and costs.

HELLER & POWERS,  
Attorneys for Plaintiff.

MARSHALL B. WOODWORTH,  
Of Counsel.

State of California,  
City and County of San Francisco,—ss.

I. W. Hellman, Jr., being duly sworn, deposes and says: That he is an officer, to wit, the Vice-president and Manager of the Union Trust Company of San Francisco (a corporation), one of the plaintiffs in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those [10] matters that he believes it to be true.

I. W. HELLMAN, Jr.

Subscribed and sworn to before me this 19th day of May, 1905.

[Seal] D. B. RICHARDS,  
Notary Public in and for the City and County of San Francisco, State of California. [11]



**Exhibit No. 1.**

IN THE NAME OF GOD AND OF OUR LORD  
JESUS CHRIST, AMEN.

I, JOHN J. VALENTINE, a resident of the City of Oakland, County of Alameda, State of California, being of sound mind and disposing memory, and appreciating the uncertainties of life do make and publish this my last will and testament;

After all my just debts shall have been paid from available cash assets, or from the conversion into cash of as much of the other holdings as may be requisite, I give and bequeath as follows:—

FIRST: To my sister Samantha I. Valentine, the sum of three thousand dollars (\$3,000.00);

SECOND: To my niece Frances V. Norvell the sum of three thousand dollars (\$3,000.00);

From these bequests to my near kindred I omit my married sisters Mary Emily Campbell, Susan Sarah Josephine Norvell, not through any oversight or want of brotherly affection and solicitude for them, but because I have reason to think, as they will understand, that they have been and are provided for; and my brother James Thurman Valentine is omitted in the same way, because I consider him capable of providing for himself.

THIRD: To my beloved wife, Alice M. B. Valentine, I give and bequeath the sum of sixty-five thousand dollars (\$65,000.00) and, in addition thereto, I give and devise to her the family homestead in East Oakland, California, known as "Cedar Croft" including all the real and personal property and house-

hold effects connected therewith or in anywise appertaining thereto, the same being valued, together at Forty-five thousand dollars (\$45,000.00).

FOURTH: All the residue of my estate, including life insurance, I wish to have cared for and handed to the best advantage and proceeds apportioned to my seven children as follows: Edward Cahill, twenty-five thousand dollars (\$25,000.00); Ethel Stein, forty thousand dollars (\$40,000.00) John Joseph Jr. twenty-five thousand dollars (\$25,000.00); William George twenty-five thousand dollars (\$25,000.00); Dudley Blanchard twenty-five thousand dollars (\$25,000.00) Eliza Ruth forty thousand dollars (\$40,000.00) Philip Crenshaw thirty-five thousand dollars (\$35,000.00) or in those proportions to as many of them as may survive me; upon the express condition, however, that the sum total of bequests to the seven children named or such of them as may survive me, be, and shall be held in trust by the Union Trust Company of San Francisco until the youngest shall have attained his or her majority; provided, further, that Edward Cahill, Ethel Stein, John Joseph Jr. and William George, to whom the proceeds of three insurance policies made payable to their mother Mary F. Valentine and aggregating twenty seven thousand dollars (\$27,000.00) revert in equal shares by reason of her decease, do allow the said shares to become a part of the trust fund; and that if they or any of them decline to do so, then the proportionate amount coming to each one of them that so declines (from the said three insurance policies) shall be deducted from the amount above set

down as his or her allotted proportion of the trust fund, and shall to that extent diminish his or her proportionate interest in the remainder of said trust funds. Income from the whole to be paid quarterly or semi-annually to each beneficiary in the proportion indicated in the above allotment and proviso.  
[12]

If any of the said children should die unmarried the proportionate bequest due the same shall revert to the remaining beneficiaries under this clause.

FIFTH: In case of my death by accident, the bequest to my wife, Alice M. B. Valentine, will be increased by the sum of twenty thousand dollars (\$20,000.00) from proceeds of accident insurance; the remainder of proceeds from such source to be divided among my seven children in the proportions stated in Clause Fourth with its proviso;

SIXTH: I hereby nominate and appoint the UNION TRUST COMPANY OF SAN FRANCISCO, of the City and County of San Francisco, State of California, the Executor of this my last will and testatment, and repeat my injunction that the bequests to my children be held in trust until the youngest shall attain his or her majority.

Pending the administration of my estate I authorize and empower my said Executor at its discretion, and without control or supervision of any court of law, to sell and dispose of any and all of said estate, except that which will be subject to my wife's direction under clause Third hereof whether real or personal, and to make valid transfers and conveyances thereof.

LASTLY: I hereby revoke any and all wills and testaments by me heretofore made.

IN WITNESS WHEREOF, I have caused the foregoing to be written, marked the first two pages with my name, and do hereunto set my hand and seal at the City of Oakland, County of Alameda, State of California, the twenty fourth day of August A. D. Nineteen hundred and One (1901)

(Signed) JNO. J. VALENTINE. [Seal]

The foregoing instrument consisting of two pages besides this, was, at the date thereof by the said John J. Valentine signed and sealed and published as and declared to be his last will and testament in the presence of us, who, at his request and in his presence, and in the presence of each other subscribed our names as witnesses thereto.

(Signed) NATHAN STEIN,

Residing at 1045 Santa Clara Avenue, Alameda, Cal.

C. H. GARDINER,

Residing at 1370 Nineteenth Avenue, East Oakland,  
Cal. [13]

**Exhibit No. 2.**

*In the Superior Court of the County of Alameda,  
State of California.*

In the Matter of the Estate of JOHN J. VALENTINE, Deceased.

**Decree of Final Distribution and Settling Final  
Account.**

The petition of Union Trust Company of San Francisco, executor of the Last Will and Testament of John J. Valentine, deceased, heretofore filed

herein praying for the final distribution of the residue of the estate of John J. Valentine, deceased, and the final account of said Union Trust Company of San Francisco, heretofore filed herein, together with a petition for the allowance of the same, and the petition of Alice M. B. Valentine, widow of John J. Valentine, deceased, heretofore filed herein, praying for the distribution of the residue of the estate of said John J. Valentine, deceased, coming on this day regularly for hearing, and the executor, said Union Trust Company of San Francisco, being represented by its counsel, E. S. Heller, Esq., and the said Alice M. B. Valentine being represented by her counsel, Warren Olney, Esq., and the minor children of said John J. Valentine, deceased, to wit: William George Valentine, Dudley Blanchard Valentine, Eliza Ruth Valentine, and Philip Crenshaw Valentine, being represented by their counsel, Charles E. Snook, Esq.;

And it appearing that due and legal notice of the hearing [14] of said petitions and account has been given as directed by the order of this Court heretofore made, and as required by law;

And after taking testimony in the matter, and the Court being fully advised does now find, adjudge and decree;

I.

That John J. Valentine, deceased, died testate on the 21st day of December, 1901, in the County of Alameda, State of California; that at the time of his death he was a resident of said County, and left estate therein and elsewhere consisting of real and personal property.



## II.

That on December 30, 1901, the Last Will and Testament of said deceased was filed in the office of the County Clerk of said County, together with a petition for the probate of the same, and that on January 17, 1902, by an order of this Court duly given and made, said Last Will and Testament of said deceased was admitted to probate, and by the same order the Union Trust Company of San Francisco was appointed executor thereof; that on the day last named said Union Trust Company of San Francisco duly qualified as such executor and Letters Testamentary were issued to it, and a duplicate thereof filed in the office of said Clerk, and said Union Trust Company of San Francisco has ever since been and now is, the duly appointed, qualified and acting executor of the Last Will and Testament of said deceased.

## III.

That under and by virtue of an order of this Court duly given and made, dated January 17, 1902, said executor caused to be published in a newspaper published in said County of [15] Alameda, to wit, in the "Oakland Enquirer," a notice to the creditors of said decedent, requiring all persons having claims against said estate to exhibit them with the necessary vouchers to said executor at its place of business, which was specified in said notice; that the time expressed in said notice for the presentation of claims was ten months after its first publication; that upon due proof of the publication of the same to the satisfaction of this Court, a decree and order was, on December 16, 1902, duly given and made adjudging

that due notice to the creditors of said deceased had been given.

IV.

That a claim of the Mountain View Cemetery Association for the sum of \$1820.50 against said estate, has not been paid, and after taking testimony concerning same, the Court now adjudges that the executor pay the same.

V.

That on April 3, 1902, the widow of said deceased, Alice M. B. Valentine, filed herein a petition for family allowance, and that on April 3, 1902, by an order of this Court duly given and made, said petition for family allowance was granted; and on October 24, 1902, upon the petition of said Alice M. B. Valentine for the continuance of said family allowance, an order was duly given and made continuing the payment of the same.

VI.

That on August 13, 1902, said executor duly made and returned to this Court and filed with the Clerk thereof, a true inventory and appraisement of all the property and estate of said deceased which had come into its possession or knowledge; that no property belonging to said estate other than that mentioned in the said inventory, saving the rents, issues and profits [16] thereof as shown by the account heretofore rendered and filed and settled, and as shown by the final account hereinabove mentioned, has come to the possession or knowledge of said executor.

VII.

That all the debts and accounts due to the said de-

cedent which were collectible have been collected, and no debts due the said estate remain uncollected through any fault or negligence on the part of said executor.

### VIII.

That said final account contains a full, true and correct account of all the receipts of said executor to the date thereof, and also a full, true and correct statement of all moneys disbursed by said executor to the date thereof, and the Court being fully advised does hereby order, adjudge, and decree that said final account be and the same is hereby settled, approved and allowed.

### IX.

That upon the hearing this day and upon the petitions above mentioned, said executor did file herein a supplemental account showing receipts and disbursements subsequent to the filing of the final account herein, and the Court being fully advised does hereby order, adjudge and decree that the said supplemental account be and the same is hereby settled, approved and allowed.

### X.

That the claim of Wells-Fargo & Co. for the sum of \$101,031.54 was allowed by the executor and the Court, and filed herein on January 3, 1903; that since the filing of the petitions for final distribution herein said Wells-Fargo & Co. sold 475 shares of the capital stock of Wells-Fargo & Co. [17] held by it as security, as appears in said claim, to wit: Certificates numbers 19,340 for one hundred shares, 19,341 for one hundred shares, 19,342 for one hundred shares,



19,344 for one hundred shares, and seventy-five shares out of ninety shares represented by certificate number 19,343, and realized upon said sale the sum of \$104,914.63, leaving a balance of 325 shares of the capital stock of Wells-Fargo & Co. represented by certificates numbers 19,058 for ten shares, 19,345 for one hundred shares, 19,346 for one hundred shares, 19,347 for one hundred shares, and ——— for fifteen shares, belonging to said estate; that after making said sale as aforesaid said Wells-Fargo & Co. did, on March 7, 1903, reimburse itself for the amount of its said claim amounting at the time of such reimbursement to the sum of \$102,630.98 and did pay to said executor the balance of said purchase price amounting to the sum of \$2,283.65, and the payment of the said claim of Wells-Fargo & Co. and the sale of said stock by Wells-Fargo & Co. *and the sale of said stock by Wells-Fargo & Co.* as aforesaid, are hereby sanctioned and approved, and the Court adjudges that said claim of Wells-Fargo & Co. is fully paid; that the receipt of said balance of \$2,283.65 by the executor herein is shown by the second supplemental account filed herein subsequent to the supplemental account above mentioned, and said second supplemental account is hereby approved and allowed.

#### XI.

That more than ten months have elapsed since the first publication of said notice to creditors; that all the debts of said deceased, all funeral expenses, expenses of last illness, expenses of administration and management of said estate to the date hereof, except counsel fees for the attorneys of said executor [18] for legal services performed in conducting the vari-

ous and necessary proceedings herein, and counsel fees for the attorney for the minor heirs, have been paid.

## XII.

That all taxes legally assessed or levied upon the property of said estate and due up to the date hereof against the said estate and property thereof, have been paid, saving and excepting, however, the following:

(a) That at noon on the first Monday in March, to wit: March 2d, 1903, there became due to the State of California, the County of Alameda, and the City of Oakland, upon the property of said estate subject and liable to taxation, the taxes for the fiscal year next ensuing, but that the rate thereof has not as yet been fixed or determined;

(b) The collateral inheritance tax due the State of California upon the legacy to the sister of said deceased, Samantha I. Valentine, which legacy amounts to \$3,000.00, and which inheritance tax is hereby fixed at the sum of \$150.00;

(c) The collateral inheritance tax due the State of California upon the legacy to the niece of said deceased, Frances V. Norvell, which legacy amounts to the sum of \$3,000.00, and which inheritance tax is hereby fixed at the sum of \$150.00;

(d) The legacy taxes due to the United States of America under an Act of Congress dated June 13, 1898, upon the amount of personal property bequeathed to the trustee hereinafter named for the benefit of the children of said deceased, in accordance with Clause Fourth of the Last Will and Testament

of said deceased; such legacy taxes are estimated as follows: Upon the share of Edward Cahill Valentine the sum of \$ 00.00; upon the share of Ethel Stein Valentine the sum of \$239.47; upon the share of John Joseph Valentine, Jr., the [19] sum of \$ 00.00; upon the share of William George Valentine the sum of \$ 00.00; upon the share of Dudley Blanchard Valentine the sum of \$165.62; upon the share of Eliza Ruth Valentine the sum of \$271.41; upon the share of Philip Crenshaw Valentine, the sum of \$236.15; that it is a matter of doubt whether or not said legacy taxes under the Act of Congress of June 13, 1898, are collectible or payable against the interests of the beneficiaries herein named by reason of the provisions of an Act of Congress dated June 27, 1902, and there is hereby distributed unto the Union Trust Company of San Francisco, as trustee, the sums of money estimated to be due on account of the legacies herein mentioned for the benefit of each of the above named seven children of said John L. Valentine, deceased, and beneficiaries under his said Last Will and Testament, in trust to hold said sums for payment to the United States of America of the legacy tax upon the several interests of said children and beneficiaries in the event that payment thereof is required by the United States of America; and if payment thereof is not required by the United States of America, or if payment thereof is avoided, then the total of said sums shall be distributed to said Union Trust Company of San Francisco, residuary legatees and devisee, in the manner hereinafter provided for the distribution of the residue of said es-

tate, as shown by paragraph “(d)” of clause XX of this decree of final distribution.

### XIII.

That the sum of \$3,250 is hereby fixed as *reasonable* counsel fees to be allowed to the executor for payment to Heller & Powers, its attorneys, and the sum of \$500 is hereby fixed as reasonable counsel fees to be paid to the attorney for minor heirs, and the Court directs the executor to pay the same. [20]

### XIV.

That the balance of cash in the hands of said executor after making the deduction for payment of the claim of Mountain View Cemetery Association, and the payment to said executor on account of attorneys' fees allowed, and upon payment of the fee of the attorney for minor heirs, is the sum of \$5,123.71.

### XV.

That the personal property particularly described in “Schedule A” annexed to this decree and made part hereof is in the possession of said executor and belongs to said estate, and the real property as shown in “Schedule B” annexed hereto and made a part hereof, belongs to and is a part of the estate of said decedent.

### XVI.

That on February 16, 1903, by an order duly given and made herein, Charles E. Snook, Esq., was appointed attorney for all the minor children of the said John J. Valentine, deceased, to wit: for William George Valentine, Dudley Blanchard Valentine, Eliza Ruth Valentine, and Philip Crenshaw Valentine, to represent them in all matters herein.

XVII.

That the heirs at law of said John J. Valentine, deceased, at the time of his death, were, his widow, Alice M. B. Valentine, and seven children, to wit: Edward Cahill Valentine, Ethel Stein Valentine, John Joseph Valentine, Jr., William George Valentine, Dudley Blanchard Valentine, Eliza Ruth Valentine, Philip Crenshaw Valentine, all of whom are now living.

XVIII.

That in the petition for final distribution filed herein by the said Alice M. B. Valentine, it is therein claimed that [21] all the shares of stock of Wells, Fargo & Co. owned by said decedent at the time of his death, and all the shares of stock of the Pacific States Telephone and Telegraph Company owned by said decedent at the time of his death, were and are community property of said decedent and Alice M. B. Valentine, and that the rest and residue of the property owned by said decedent at the time of his death, was his separate property; that said Alice M. B. Valentine is willing to waive her right to all the specific legacies and devises made to her in the Last Will and Testament of said deceased, and is further willing to waive her right to one-half of the community property of the said deceased and herself, and is further willing to waive her statutory right to a homestead out of the property of said deceased, and is further willing to waive her statutory right to the household furniture and effects of said deceased, and is further willing to waive her right to all moneys accruing out of any life insurance on the life of said



deceased the annual premiums of which do not exceed five hundred dollars, provided there is distributed to her by consent and agreement of all parties in interest herein, an undivided one-third of all of the property of said John J. Valentine, deceased, including the separate and community property of his said estate, after payment of the respective legacies to Samantha I. Valentine and Frances V. Norvell hereinbefore mentioned, and after payment of the expenses of administration, the debts of deceased, and the costs and expenses shown by the accounts of the executor on file herein;

That after a full hearing of said petition and of the issues presented thereby, and after considering the testimony and evidence offered in support thereof the Court adjudges [22] and finds that all the allegations of fact therein set forth are true, and all parties interested in said estate, to wit: Union Trust Company of San Francisco, as residuary legatee and devisee under the Last Will and Testament of said decedent, and Charles E. Snook, Esq., attorney for the above-named minor children of said John J. Valentine, deceased, both consenting thereto, and Edward Cahill Valentine, Ethel Stein Valentine, and John Joseph Valentine, Jr., children of said deceased and beneficiaries under his last Will and Testament not objecting but consenting thereto, the Court does adjudge and decree that all interested parties herein have consented to the distribution to the said Alice M. B. Valentine of one-third of all the separate and community property owned by the said John J. Valentine at the time of his death, less the

deductions above mentioned concerning the payment of the legacies, expenses of administration, debts of deceased, and costs and expenses shown by the accounts of the executor.

XIX.

That at the time of the death of said John J. Valentine, deceased, he was the owner of a policy of life insurance number 143,373 in the Mutual Life Insurance Company of New York for the sum of Fifteen Thousand Dollars, and which was payable to Mary F. Valentine, the former wife of said deceased, and upon her death to her four children, viz.: Edward Cahill Valentine, Ethel Stein Valentine, John Joseph Valentine, Jr., and William George Valentine; that the said policy was paid after his death, and each of said four last-named children received the sum of \$3,758.50 on account thereof;

That at the time of the death of said John A. Valentine, deceased, he was the owner of a policy of life insurance numbered [23] 86,139 in the New York Life Insurance Company for the sum of Ten Thousand Dollars, and which was payable to Mary F. Valentine, the former wife of said deceased, and upon her death to the children of John J. Valentine; that the said policy was paid after his death, and that each of the seven children of the said John J. Valentine, deceased, received the sum of \$1,428.57 on account thereof;

That at the time of the death of said John J. Valentine, he was the owner of a policy of life insurance numbered 1965 in the Expressman's Mutual Life Insurance Association, for the sum of Two Thousand

Dollars, and which was payable to Mary F. Valentine, the former wife of said deceased, and upon her death to the four children of the said Mary F. Valentine, to wit: Edward Cahill Valentine, Ethel Stein Valentine, John Joseph Valentine, Jr., and William George Valentine; that the said policy was paid after his death and each of the said four last-named children received the sum of \$500.00 on account thereof;

That the said Mary F. Valentine was at one time the wife of said deceased, and died on or about the 7th day of September, 1885, leaving surviving her four children of the said John J. Valentine, to wit, said Edward Cahill Valentine, Ethel Stein Valentine, John Joseph Valentine, Jr., and William George Valentine, being four of the children herein mentioned;

That at the time the proceeds of said three policies of life insurance were paid to the children above named of the said decedent, John J. Valentine, each and all of said children saving and excepting Edward Cahill Valentine and Ethel Stein Valentine, were minors, and the sums received by the said minors were paid to Alice M. B. Valentine, as guardian of [24] their persons and property, for and in their behalf; that neither the children of said decedent, nor Alice M. B. Valentine as guardian of the persons and property of any of said minor children, have allowed the said sums so paid as aforesaid on account of moneys received from said policies of life insurance to become a part of the residue of said estate, or part of the trust funds as defined in clause Fourth



of said Last Will and Testament, and that, on account thereof, the proportionate amounts coming to each of said children must be deducted from the amount set down in said Last Will and Testament of said deceased or his or her allotted portion of the property to be held in trust by the trustee, and must, to that extent diminish his or her proportionate interest in the remainder of said trust funds, and that by reason of said payments proper allowances, deductions and additions must be made as against the shares of the residuary beneficiaries, and which allowances, deductions and additions are hereinafter particularly set forth and determined.

XX.

It is hereby ordered, adjudged and decreed that there be distributed

(a) Unto Samantha I. Valentine, sister of said deceased, the sum of Three Thousand Dollars, less five per cent thereof for collateral inheritance tax due the State of California;

(b) Unto Frances V. Norvell, niece of said deceased, the sum of Three Thousand Dollars, less five per cent thereof for collateral inheritance tax due the State of California;

(c) Unto Alice M. B. Valentine, widow of said deceased, after payment of the foregoing legacies and subject to the payment of all taxes levied or to be levied by, due or to become [25] due to, assessed or to be assessed by the City of Oakland, or the County of Alameda, or the State of California, one-third of all the property now in the possession and control of the executor herein, including one-third of

the cash on hand, one-third of the personal property shown in "Schedule A" hereto attached, and an undivided one-third of the real property shown in "Schedule B" hereto attached, and an undivided one-third of all other property of said deceased not now known or discovered and which may hereafter become known or discovered, or which may herein be imperfectly described, with the right, however, in the executor herein, to withhold sufficient moneys to pay the taxes levied or to be levied by, due or to become due to, assessed or to be assessed by the City of Oakland, or the County of Alameda, or the State of California, out of the share so distributed, or, in its discretion, to require security from the said Alice M. B. Valentine for the payment thereof, after the payment of the legacies to Samantha I. Valentine and Frances V. Norvell;

(d) All the rest and residue of the property now in the possession or under the control of the executor aforesaid, and all other property of said deceased not now known or discovered and which may hereafter become known or discovered, or which may be herein on hand, two-thirds of the personal property shown imperfectly described including two-thirds of the cash in "Schedule A" hereto attached, and an undivided two-thirds of the real property shown in "Schedule B" hereto attached, is, subject to the payment of all taxes levied or to be levied by, due or to become due to, assessed or to be assessed by the City of Oakland, or the County of Alameda, or the State of California, and subject to the payment to the United States of America of the legacy tax due from the share of each

of the beneficiaries [26] hereinafter named under the Act of Congress of June 13, 1898, distributed to the Union Trust Company of San Francisco in trust for the benefit of the following named beneficiaries in the proportions herein named, as follows: For the benefit of Edward Cahill Valentine, 25/215ths thereof less the sum of \$2,543.82 (deduction by reason of receipt of proceeds of life insurance policies as aforesaid), and less the sum of \$00.00, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which may become due to the United States of America under the Act of Congress of June 13, 1898); for the benefit of Ethel Stein Valentine, 40/215ths thereof less the sum of \$657.87 (deduction by reason of receipt of proceeds of life insurance policies as aforesaid), and less the sum of \$239.47, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which may become due to the United States of America under the Act of Congress of June 13, 1898); for the benefit of John Joseph Valentine, Jr., 25/215ths thereof less the sum of \$2,543.82 (deduction by reason of receipt of proceeds of life insurance policies as aforesaid), and less the sum of \$00.00, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which may become due to the United States of America under the Act of Congress of June 13, 1898); for the benefit of William George Valentine, 25/215ths thereof less the

sum of \$2,543.82 (deduction by reason of receipt of proceeds of life insurance policies as aforesaid), and less the sum of \$00.00, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which [27] may become due to the United States of America under the Act of Congress of June 13, 1898); for the benefit of Dudley Blanchard Valentine 25/215ths thereof *plus* the sum of \$1,714.68 (addition made by reason of receipt of proceeds of life insurance policies as aforesaid), and less the sum of \$165.62, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which may become due to the United States of America under the Act of Congress of June 13, 1898); for the benefit of Eliza Ruth Valentine, 40/215ths thereof *plus* the sum of \$3,601.65 (addition made by reason of receipt of proceeds of life insurance policies as aforesaid), and less the sum of \$271.41, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which may become due to the United States of America under the Act of Congress of June 13, 1898); for the benefit of Philip Crenshaw Valentine, 35/215th thereof *plus* the sum of \$2,973.00 (addition made by reason of receipt of proceeds of life insurance policies as aforesaid); and less the sum of \$236.15, or such other sum as may be paid by said trustee on account of legacy tax due the United States of America (deduction on account of legacy tax which

may become due to the United States of America under the act of Congress of June 13, 1898); and in trust further to receive the rents, issues, income and profits of the same, and of all and any other property into which the same or any other part thereof may be converted, to and for the use of the above-named seven children of said John J. Valentine, deceased, in the proportions to which each is entitled, as aforesaid, with full power and authority to the said trustee, in its discretion, at [28] any and all times to sell all or any part of said property and to reinvest the proceeds thereof, or any part thereof, in any other property, real or personal, and the same to again sell, invest or reinvest in the same manner at all times and as often as said trustee may deem necessary and for the best interests of said beneficiaries, with full power and authority to make all such alterations or repairs upon any of said real property, or any real property into which the said personal property may be converted, or in which the same may be invested or reinvested, as it may from time to time think proper, also with full power to insure the same or such part or portion of the same as it may think proper in such sums and with such insurance companies as it may think proper, and with further authority to lease the same or any portion thereof on such terms and conditions and for such time as it may think proper; and in trust further, with full power and authority in case of loss or destruction by fire, or otherwise, of any of the buildings or improvements on any of said real property, to rebuild and reconstruct the same in such manner, style or dimen-



sions as it shall see fit and pay therefor out of said insurance moneys, and if said insurance moneys should not be sufficient, then out of any other property belonging to said trust funds; and with further authority and power to pay and discharge all taxes, assessments, charges, costs and expenses that may accrue against or be levied upon, or become a charge upon any or all property of said trust estate, and whether the taxes be City, County, Federal or Municipal, or whatever name or nature the same may be; and upon further trust to pay the said net income of the rents, issues and profits of said property, or of any property into which the same may be [29] converted, invested or reinvested, after deducting all charges, expenses and costs, quarterly, or semi-annually, to each of the said children of the said John J. Valentine, deceased, in the proportions above mentioned; and provided, further, that all costs, expenses, burdens, taxes and charges of every kind or character during the continuance of said trust, shall be borne by each of the above-named beneficiaries in the same proportions, and the property held in trust for them shall be subjected to such charges in said proportions; and in trust further, that when the youngest of said above-named children has attained his or her majority, that the trust shall thereupon cease, and the properties herein distributed in trust shall vest in the proportions hereinabove mentioned in the above-named children of said John J. Valentine, deceased, or in the heirs of any child who may die before the youngest of said children shall reach his or her majority, provided, however, that if any of said children

should die before the youngest of said children reaches his or her majority and should die never having been married, the proportionate share of such beneficiary dying shall become a portion of said trust fund and property and shall vest in equal shares in the remaining beneficiaries when the youngest of such children shall reach his or her majority, and provided further, that if the youngest child, Philip Crenshaw Valentine, should die before reaching the age of majority, then the vesting of the trust property shall take place when Eliza Ruth Valentine reaches the age of majority, and if both should die before reaching the age of majority, then the vesting as herein mentioned shall take place when Dudley Blanchard Valentine reaches the age of majority, and provided further, that if Dudley Blanchard [30] Valentine, Eliza Ruth Valentine and Philip Crenshaw Valentine should all die under the age of majority, then the vesting as herein mentioned shall take place when William George Valentine reaches the age of majority, and provided further, that if the last four named children of John J. Valentine, deceased, should all die before reaching the age of majority, then the vesting as herein provided shall take place upon the death of the last of said last-named four children before reaching the age of majority.

Should said trustee not pay the United States of America any legacy tax under the Act of June 13, 1898, upon the shares of said beneficiaries, then no deduction shall be made on account of said legacy tax from the share of each of said beneficiaries, and such respective sums shall be held in trust for the re-

spective benefit of the beneficiaries as hereinabove provided.

## XXI.

Nothing herein shall be construed as distributing any lot in any cemetery corporations owned by deceased at the time of his death, but such lot shall descend in regular line of succession to the heirs at law of the said John J. Valentine, deceased.

## XXII.

It is further ordered, adjudged, and decreed, that a certified copy of this decree be recorded in the office of the County Recorder of the Counties of Alameda, San Benito, and Santa Clara, State of California.

## XXIII.

It is further ordered, adjudged and decreed that upon the said executor recording said certified copies, as aforesaid, [31] and producing good and sufficient receipts for the distribution herein ordered, that it be released and discharged from its obligation as such executor.

Done in open court this 11th day of March, 1903.

S. P. HALL,

Judge of said Superior Court. [32]

## SCHEDULE "A."

1. Cash. .... \$
2. Six Hundred (600) shares of the capital stock of the Pacific Gas Improvement Company, a corporation, represented by certificates numbers 383, 384, 385, 386, 387, 388.
3. Two Hundred (200) shares of the capital stock of the San Francisco Gas and Electric Com-



pany, a corporation, represented by certificates numbers 10,812, 10,815, 10,813, 3,189.

4. Eleven Hundred and Ninety (1190) shares of the capital stock of the Pacific States Telephone and Telegraph Company, a corporation, represented by certificates numbers 21, 76, 77, 78, 79, 262, 80.
5. Twelve(12) shares of the capital stock of the Pacific Surety Company, a corporation, represented by certificates numbers 10 and 210.
6. Fifty (50) shares of the capital stock of the Saratoga and Los Gatos Real Estate Association, a corporation, represented by certificate number 9.
7. Three Hundred and Twenty-five shares of the capital stock of Wells, Fargo & Co., a corporation, represented by certificates numbers 19-058, 19345, 19347 and certificate #
8. Household furniture, household goods, fixtures, and personal property contained in the former residence of deceased in East Oakland, including library, statuary, stable, horses, harnesses, and carriages. [33]

#### SCHEDULE "B."

1. That certain piece and parcel of land situate in the County of San Benito, State of California, and described as follows: Part of the rancho San Felipe y Ausaymas described as follows: Beginning at a point in the center of the Tequesquita Creek at the Southeast corner of E. J. Turner's land, being the Southwest corner of the Touchard Tract, so-called, and running thence along said Turner's land

North  $14^{\circ}$  West Sixty-three (63) chains to the North-east corner of said Turner's land on the South side of a road Fifty (50) links wide; thence North  $76^{\circ}$  East along said road Thirty and  $30/100$  (30.30) chains to a post upon the West side and line of James Dunne's land and to center of road known as Hollister and San Felipe Road; thence along said Dunne's line and center of said Road, South  $14^{\circ}$  East Seventy-four (74) chains, to the center of said Tequesquita Creek at the Southwest corner of the land of said James Dunne and the Southeast corner of the Touchard Tract; thence down said Creek and center thereof following the meandering of the channel thereof, westward to the place of beginning.

Containing Two Hundred and Ten acres of land. Situated about three-fourth miles Easterly from the Pacheco School House in San Felipe District.

Less, however, the following described parcel of land which was in the lifetime of said John J. Valentine, conveyed by him, viz.:

Beginning at the Southwest corner of the intersection of the Hollister and San Felipe Road with the Pacheco School House Road and running along the South side of the said Pacheco School-house Road, South  $79^{\circ}$  West 466.69 feet to a [34] stake; thence South  $14\frac{1}{2}^{\circ}$  East 466.69 feet to a stake; thence North  $79^{\circ}$  East 466.69 feet to a stake on the West side of the Hollister and San Felipe Road; thence North  $14\frac{1}{2}^{\circ}$  West 466.69 feet along the West side of said last named Road to the place of beginning, containing five acres of land situate about  $\frac{3}{4}$  of a mile East of the Pacheco School-house.

Said last described parcel of land having been conveyed by John J. Valentine and D. C. Riddell to L. A. Chase by deed dated August 2d, 1889, and recorded in the office of the County Recorder of the County of San Benito August 24th, 1889, in Book 10 of Deeds, page 532.

2. The following described piece and parcel of land situate in the County of Santa Clara, State of California, described as follows: Beginning at the point of intersection of the West line of land formerly owned by C. H. Lapham with the center line of the road to McCarthysville; running thence along the West line of land formerly owned by said Lapham, North 28.70 chains to the Southeast corner of land of S. Goodenough; thence along the South line of land of said Goodenough, S.  $89^{\circ} 39'$  W. 37.78 chains to the East line of Saratoga Avenue; thence along the East line of said Saratoga Avenue S.  $10^{\circ} 40'$  W. 3.00 chains, S.  $6^{\circ} 55'$  W. 4.00 chains, S.  $1^{\circ} 20'$  W. 7.00 chs., S.  $2^{\circ} 50'$  W. 5.00 chains, S.  $5^{\circ} 33'$  W. 4.00 chains, and S.  $7^{\circ} 15'$  W. 3.24 chains to the Northwesterly corner of the Methodist Church Tract; thence along the North line of said Church Tract N.  $89^{\circ}$  E. 5.52 chains to the Northeasterly corner of said Church Tract; thence along the East line of said Church Tract S.  $0^{\circ} 16'$  E. 3.26 chs. to the center of said road to McCarthysville; thence along the [35] center of said road N.  $88^{\circ} 43'$  E. 34.34 chains to the place of beginning. Containing 111 60/100 acres of land and being a portion of the Quito Rancho. Courses true Mag. Var.  $16^{\circ} 45'$  East as surveyed by John Coombe, Surveyor and C. E., Mch. 9, 1885.

Less the lands conveyed by J. J. Valentine, deceased, to Simon Hasterlick by deed dated January 12th, 1895, recorded in the office of the County Recorder of said County of Santa Clara in Vol. 177 of Deeds, page 234, and which last named lands are described as follows:

Commencing at a point in the center line of the Williams Road and being the common corner for lands of E. E. Maynard, formerly of C. H. Lapham and John J. Valentine, and running thence Northerly along the line between lands of said Maynard and said Valentine 28.731 $\frac{1}{2}$  chs. to the line between lands of J. T. Orkney (formerly Goodenough) and said Valentine; thence West along the South line of land of Orkney 3.47  $\frac{1}{10}$  chs. to a stake; thence S. 28.79  $\frac{3}{10}$  chs. to the center line of said Williams Road; thence Easterly along the center line of said Williams Road 3.47  $\frac{4}{5}$  chs. to the place of beginning. Containing 10 acres of land as surveyed by Shackelford and Fisher in December 1894, and being a portion of the Quito Rancho.

And less the lands conveyed by J. J. Valentine, deceased, to Albert Hasterlick and others by deed dated January 12, 1895, recorded in the office of the County Recorder of said County of Santa Clara in Vol. 177 of Deeds page 256, and which last-named lands are described as follows:

Commencing at a point in the center line of the Williams Road 3.47  $\frac{4}{5}$  chs. Westerly from the common corner of lands [36] of E. E. Maynard, formerly of C. H. Lapham and John J. Valentine, and

running thence N. 28.79  $\frac{3}{10}$  chs. to the line between lands of J. T. Orkney (formerly Goodenough) and said Valentine; thence West along the South line of land of said Orkney 3.47  $\frac{2}{10}$  chs. to a stake; thence S. 28.84  $\frac{6}{10}$  chs. to the center line of said Williams Road; thence Easterly along the center line of said Williams Road 3.47  $\frac{3}{10}$  chs. to place of beginning. Containing 10 acres of land as surveyed by Shackelford and Fisher in December, 1894, and being a part of the Quito Rancho.

And less the lands conveyed by J. J. Valentine, deceased, to Charles S. Hemphill by deed dated November 27th, 1895, recorded in the office of the County Recorder of said County of Santa Clara in Vol. 182 of Deeds, page 576, and which last-named lands are described as follows:

Commencing at a point in the center line of the Williams Road 6.95  $\frac{1}{10}$  chs. Westerly from the West line of lands of E. E. Maynard, the same being the West line of lands of Hasterlick, and running thence North along the West line of lands of Hasterlick 28.84  $\frac{6}{10}$  chs. to the South line of lands of Orkney (formerly Goodenough); thence Westerly along the South line of lands of Orkney 3.463 chs.; thence South 28.902 chs. to the center line of Williams Road; thence Easterly along the center line of said Williams Road 3.464 chs. to the point of beginning. Containing 10 acres of land, known as Lot 3 of the Valentine Tract as surveyed by Shackelford and Fisher, and being a portion of the Quito Rancho.

3. All that certain piece or parcel of land situate in the City of Oakland, County of Alameda, State



of California, bounded and described as follows, to wit: [37]

Commencing at the corner formed by the intersection of the Northwesterly line of Thirteenth (13th) Avenue (formerly Walker Street) with Northeasterly line of East Twentieth (20th) Street (formerly Humbert Street); thence Northeasterly along said line of Thirteenth (13th) Avenue, Two Hundred (200) feet; thence at right angles Northwesterly and parallel with the Northeasterly line of East Twentieth (20th) Street, Three Hundred (300) feet to the Southeasterly line of Twelfth (12th) Avenue extended; thence at right angles Southwesterly and parallel with the Northwesterly line of Thirteenth (13th) Avenue and along the Southeasterly line of said Twelfth (12th) Avenue, Twenty-five (25) feet; thence at right angles Southeasterly and parallel with the Northeasterly line of East Twentieth (20th) Street, Seventy-five (75) feet; thence at right angles Southwesterly and parallel with the Northwesterly line of Thirteenth (13th) Avenue One Hundred and Seventy-five (175) feet to the Northeasterly line of East Twentieth (20th) Street, and thence Southeasterly along said line of East Twentieth (20th) Street, Two Hundred and Twenty-five (225) feet to the point of commencement.

Being a part of Block No. One Hundred and Twenty-seven (127) as laid down and delineated on Higley's Map of the Town of Clinton of record in Liber "B" of Deeds, page 537, in the office of the County Recorder of said County of Alameda, with the improvements thereon.



[Endorsed]: Filed Mar. 11, 1903. John P. Cook,  
Clerk. By H. E. Magill, Deputy Clerk [38]

State of California,  
County of Alameda,—ss.

I, John P. Cook, County Clerk of said County and ex-officio Clerk of the Superior Court in and for said County, hereby certify that I have compared the above and foregoing copy with the original Decree of Final Distribution and settling Final Account John J. Valentine #7723, and that the same is a full, true and correct copy of such original in the above-entitled matter and of the whole thereof, as the same now remains of record, and on file in the office of the Clerk of said Superior Court.

Witness my hand with the seal of said Superior Court affixed, at the City of Oakland, this 11th day of March A. D. 1903.

[Seal]

JOHN P. COOK,  
County Clerk.  
By H. E. Magill,  
Deputy Clerk. [39]

**Exhibit No. 3.**

UNITED STATES INTERNAL REVENUE.  
NOTICE IN DUPLICATE BY EXECUTOR,  
ADMINISTRATOR, OR TRUSTEE RELATIVE TO LEGACIES.

Every executor, administrator, or trustee having in charge or trust any legacy or distributive share exceeding the sum of ten thousand dollars in actual value shall give NOTICE in writing to the collector or deputy collector of Internal Revenue of the dis-

trust where the deceased grantor or bargainer last resided within thirty days after he shall have taken charge of such trust.—Act of March 2, 1901, 31 Statutes, page 948.

JOHN C. LYNCH,

Collector, 1st District of Cal., San Francisco, Cal.

Sir:

In accordance with the requirements of Section 30 of the Act of June 13, 1908, known as the "War Revenue Law" as amended by the Internal-Revenue Act of March 2, 1901, you are hereby notified that the undersigned is the executor of the estate of J. J. Valentine deceased, who died on the 21st day of December, 1901; that the value of the personal estate on the date of death was about Three hundred Eighty two Thousand and nine hundred Fifty-five and 03/100 Dollars, and that there will be heirs, legatees, or persons beneficially interested in said estate, each to an amount in excess of ten thousand dollars, as follows: [40]

Name of Each Beneficiary.	Interest of Each Beneficiary (Estimated).	
	Dollars.	Cts.
Alice M. B. Valentine.....	86200	92
Samutha J. Valentine.....	3000	00
Francis J. Norvell.....	3000	00
Edward C. Valentine.....	17502	91
William George Valentine.....	17502	91
Ethel Stein Valentine.....	31416	89
Duoler B. Valentine.....	21761	46
Eliza R. Valentine.....	35676	41
Phillip C. Valentine.....	31038	41
J. J. Valentine, Jr.....	17502	91

Dated at San Francisco this 29 day of April, 1903.

Note.—This estate will be settled in the Probate Court of Alameda County, at Oakland, Cal.

(Signed): UNION TRUST COMPANY OF  
SAN FRANCISCO.

By HELLER & POWERS,

Its Attorneys.

Residence: 2 Montgomery St., San Francisco  
Cal.

(Signed): \_\_\_\_\_

Residence: \_\_\_\_\_

(Signed): \_\_\_\_\_

Residence: \_\_\_\_\_

[Endorsed]: U. S. Internal Revenue. Notice  
(In Duplicate) of Union Trust Company of San  
Francisco, Executor of the Estate of J. J. Valentine,  
Deceased. \_\_\_\_\_, 190— To the Collector of the 1st  
District of Cal. [41]

**Exhibit No. 4.**

**COPY OF WILL.**

IN THE NAME OF GOD AND OF OUR LORD  
JESUS CHRIST, AMEN.

I, JOHN J. VALENTINE, a resident of the City  
of Oakland, County of Alameda, State of California,  
being of sound mind and disposing memory, and ap-  
preciating the uncertainties of life do make and  
publish this my last will and testament;

After all my just debts shall have been paid from  
available cash assets, or from the conversion into  
cash of as much of the other holdings as may be  
requisite, I give and bequeath as follows:

FIRST: To my sister Samantha I. Valentine, the  
sum of three thousand dollars (\$3,000.00);

SECOND: To my niece Frances V. Norvell the sum of three thousand dollars (\$3,000.00);

From these bequests to my near kindred I omit my married sisters Mary Emily Campbell, Susan Sarah Josephine Norvell, not through any oversight or want of brotherly affection and solicitude for them, but because I have reason to think, as they will understand, that they have been and are provided for; and my brother James Thurman Valentine is omitted in the same way, because I consider him capable of providing for himself.

THIRD: to my beloved wife, Alice M. B. Valentine, I give and bequeath the sum of sixty-five thousand dollars (\$65,000.00) and, in addition thereto, I give and devise to her the family homestead in East Oakland, California, known as "Cedar Croft" including all the real and personal property and household effects connected therewith or in anywise appertaining thereto, the same being valued, together at Forty-five thousand dollars (\$45,000.00).

[42]

FOURTH: All the residue of my estate, including life insurance, I wish to have cared for and handed to the best advantage and proceeds apportioned to my seven children as follows: Edward Cahill twenty-five thousand dollars (\$25,000.00); Ethel Stein, forty thousand dollars (\$40,000.00); John Joseph Jr. twenty-five thousand dollars (\$25,000.00), William George, twenty-five thousand dollars (\$25,000.00); Dudley Blanchard, twenty-five thousand (\$25,000.00); Eliza Ruth forty thousand dollars (\$40,000.00) Philip Crenshaw thirty five

thousand dollars (\$35,000.00) or in those proportions to as many of them as may survive me; upon the express condition, however, that the sum total of bequests to the seven children named or such of them as may survive me, be, and shall be held in trust by the Union Trust Company of San Francisco until the youngest shall have attained his or her majority; provided, further, that Edward Cahill, Ethel Stein, John Joseph Jr. and William George, to whom the proceeds of three insurance policies made payable to their mother Mary F. Valentine and aggregating twenty seven thousand dollars (\$27,000.00) revert in equal shares by reason of her decease, do allow the said shares to become a part of the trust fund; and that if they or any of them decline to do so, then the proportionate amount coming to each one of them that so declines (from the said three insurance policies) shall be deducted from the amount above set down as his or her allotted proportion of the trust fund, and shall to that extent diminish his or her proportionate interest in the remainder of said trust funds. Income from the whole to be paid quarterly or semi-annually to each beneficiary in the proportion indicated in the above allotment and proviso.

If any of the said children should die unmarried the [43] proportionate bequest due the same shall revert to the remaining beneficiaries under this clause:

FIFTH: In case of my death by accident, the bequest to my wife, Alice M. B. Valentine, will be increased by the sum of twenty thousand dollars (\$20,000.00) from proceeds of accident insurance;



the remainder of proceeds from such source to be divided among my seven children in the proportions stated in Clause Fourth with its proviso;

SIXTH: I hereby nominate and appoint the UNION TRUST COMPANY OF SAN FRANCISCO, of the City and County of San Francisco, State of California, the Executor of this my last will and testament, and repeat my injunction that the bequests to my children be held in trust until the youngest shall attain his or her majority.

Pending the administration of my estate I authorize and empower my said Executor at its discretion, and without control or supervision of any court of law, to sell and dispose of any or all of said estate, except that which will be subject to my wife's direction under clause Third hereof whether real or personal, and to make valid transfers and conveyances thereof.

LASTLY: I hereby revoke any and all wills and testaments by me heretofore made.

IN WITNESS WHEREOF, I have caused the foregoing to be written, marked the first two pages with my name, and do hereunto set my hand and seal at the City of Oakland, County of Alameda, State of California, the twenty fourth day of August A. D. Nineteen hundred and One (1901).

(Signed) JNO. J. VALENTINE. [Seal]

[44]

The foregoing instrument consisting of two pages besides this, was, at the date thereof by the said John J. Valentine signed and sealed and published as and declared to be his last will and testament in the pres-



ence of us, who, at his request and in his presence, and in the presence of each other subscribed our names as witnesses thereto.

(Signed) NATHAN STEIN,  
Residing at 1045 Santa Clara Avenue, Alameda,  
Cal.

C. H. GARDINER,  
Residing at 1370 Nineteenth Avenue, East Oakland,  
Cal. [45]

*In the Superior Court of the County of Alameda,  
State of California.*

In the Matter of the Estate of JOHN J. VALEN-  
TINE, Deceased.

STATEMENT SHOWING CLEAR VALUE OF  
PERSONAL PROPERTY.

RECEIPTS.

1. Property per inventory.

600 shares Gas Impr. Improvement Co. . . . .	\$ 24000.00
200 shares San Francisco Gas & Electric Co. . . . .	9000.00
1190 shares Pacific States Telephone & Telegraph Co. . . . .	142800.00
12 shares Pacific Surety Co. . . . .	1200.00
50 shares Saratoga & Los Gatos Real Es- tate Assn. . . . .	2500.00
800 shares Wells, Fargo & Co. . . . .	168000.00
Promissory note of Charles S. Hemphill. .	2340.00
Household furniture, goods, fixtures and personal property in former home of deceased, including library, statuary,	

stables, horses, harness and carriages .....	\$ 10000.00
Cash .....	2082.83
2. Property per Accounts of Executor.	
Dividend Pacific Surety Co.....	18.00
From Estate of George S. Ladd.....	229.20
From Pacific States Telephone & Telegraph Co. ....	1785.00
From Wells, Fargo & Co.....	3950.00
From Wells, Fargo & Co.....	50.00
From New York Life Insurance Co.....	10000.00
From New York Life Insurance Co.....	5000.00
Total .....	\$382,955.03

[46]

## DISBURSEMENTS.

Disbursements as per Accounts.

Paid Ben Armer for photographing will .....	\$ 25.00
Paid D. B. Richards, Notary fees.....	2.00
Paid Oakland Enquirer Publishing Company for probate notices.....	7.50
Paid Oakland Enquirer Publishing Company .....	5.00
Paid D. B. Richards Notary Public fees (County Clerk's Certificate).....	.50
Paid D. B. Richards, Notary Fees and car fare .....	1.10
County Clerk's fees.....	7.00
Paid Geo. W. McConnell for copy abstract of San Benito lands.....	1.00

Paid San Jose Abstract Company continuance of abstract .....	5.00
Paid Gus L. Mix & Co. for searching records J. J. Valentine property in Oakland .....	2.50
Heller & Powers for expenses.....	3.50
G. H. Gardiner, appraiser's fees and expenses .....	32.50
E. P. Vandercook, appraiser's fees.....	28.00
D. B. Richards, notary fees to release of mortgage, etc.....	2.50
D. B. Richards, notary fees in re affidavit to inventory .....	.50
Paid St. Matthews School as per sworn statement February 12, 1902.....	56.90
Wells, Fargo & Co. express for amount of claim .....	1989.31
Paid Heller & Powers for costs, etc.....	11.10
Paid Chas. G. Henshaw, appraiser's fees .....	25.00
Paid Albert Brown, undertaker.....	405.00
For certified copy of first account of executor .....	.50
Laurel Hill Cemetery Assn. to Jul. 1, 1902 .....	27.00
W. T. Hess, notary fee in re account....	.50
Paid Heller & Powers for professional services, etc.....	2.35
Payment of the following claims allowed and ordered to be paid:	
Shreve & Co.....	76.00
H. Liebes & Co.....	30.00

Taft & Pennoyer .....	\$ 132.12
Nathan Dohrman & Co.....	30.55
Roos Bros.....	30.00
Raphael Weil & Co.....	95.90
Herrman Bros.....	81.45
Davis Schoenwasser & Co.....	20.00
Dr. A. Liliencrantz.....	84.00
J. R. Gates & Co.....	7.55
Dr. E. H. Hopkins.....	35.00
Saratoga & Los Gatos Real Estate Assn..	1000.00
Jas. S. White & Co.....	10.00
Daniel & Pancoast for monument.....	1296.95
Paid Union Trust Co. of San Francisco, Executer, fees as follows:	
\$1000.00 at 7%.....	\$ 70.00
9000.00 at 5%.....	450.00
10000.00 at 4%.....	400.00
30000.00 at 3%.....	900.00
50000.00 at 2%.....	1000.00
348051.02 at 1%.....	3480.51
	6300.51
Fees to close estate, including recording of decree of distribution in Counties of Alameda, San Benito & Santa Clara, estimated .....	100.00
Payment of Claim of Wells, Fargo & Co..	102630.00
Attorneys fees Heller & Powers.....	3250.00
Attorneys fees paid Chas. E. Snook.....	500.00
[47]	<hr/>

RECAPITULATION.

Receipts .....\$382,955.03  
Disbursements ..... 118,352.27

---

Balance .....\$264,602.76

Of which  $\frac{1}{3}$  thereof..... 82,200.92

Under the decree of final distribution is distributed to the widow of said deceased, Alice M. Valentine, leaving a balance of .....\$182,601.84

For distribution to the Union Trust Company of San Francisco as Trustee for the beneficiaries.

Under this decree of final distribution said residue is distributed to said Trustee for the benefit of the beneficiaries hereinafter named in the proportions and in the manner following:

For the benefit of Edward Cahill Valentine 25/215 thereof, less \$2543.82;

For the benefit of Ethel Stein Valentine 40/215 thereof, less \$657.80;

For the benefit of John J. Valentine, Jr., 25/215 thereof less \$2543.82;

For the benefit of William George Valentine 25/215 thereof less \$2543.82;

For the benefit Dudley Blanchard Valentine 25/215 thereof plus \$1714.68;

For the benefit of Eliza Ruth Valentine 40/215 thereof plus \$3600.63;

For the benefit of Phillip Crenshaw Valentine 35/215 thereof plus \$2971.98.

These proportions of the residue, with the addi-

tions and deductions above shown, result in the distribution to said trustee for the benefit of said beneficiaries of the following amounts as clear value of personal property so distributed, *viz.*:

For the benefit of Edward Cahill Valentine .....	\$17502.91
For the benefit of Ethel Stein Valentine..	31416.89
For the benefit of John J. Valentine.....	17502.91
For the benefit of William George Valentine .....	17502.91
For the benefit of Dudley Blanchard Valentine .....	21761.40
For the benefit of Eliza Ruth Valentine..	35676.41
For the benefit of Phillip Crenshaw Valentine .....	31038.41

The deceased John J. Valentine died on December 21, 1901. His youngest living child at the time of his death was and is Phillip Crenshaw Valentine, who was born May 7th, 1899, and who will reach the age of 21 years on May 7, 1920. The trust will continue for  $18\frac{3}{8}$  years.

The schedules attached hereto are based:

1. On the annuity.
2. On the value of the funds held in trust at the time of vesting.

[Endorsed]: In the Matter of the Estate of John J. Valentine, Deceased. Statement Showing Clear Value of Personal Property. [48]

UNITED STATES INTERNAL REVENUE.  
LEGACIES AND DISTRIBUTIVE SHARES.

Sections 29 and 30, Act of June 13, 1898, as



amended by Sections 10 and 11 of an Act approved March 2, 1901.

SCHEDULE of Legacies or Distributive Shares arising from personal property of any kind whatsoever, being in charge or trust of Union Trust Co. of San Francisco as Executor, said property passing from John J. Valentine, deceased, of the City of Oakland, County of Alameda, and State of California, who deceased upon the 21st day of December, 1901, to the persons hereinafter mentioned, by will or by the intestate laws of California; also the amount of such property, together with the amount of duty or tax which has accrued or should accrue thereon, agreeably to the provisions of the Internal-Revenue Laws of the United States.

Appraised value of Personal Estate . . .	\$382,955.03
Total amount legal debts and expenses to which the personal property is liable . . . . .	118,352.27
	<hr/>
Balance, clear value of Personal Estate . .	\$264,602.76

Lines.	1. Names of Persons Entitled to Beneficial Interest in said Property.	2. Age.	3. Relationship of Beneficiary to Person Who Died Possessed.	4. Clear Value of Legacy.	5. Legacies Exempt.	6. Amount Taxable.	7. Rate for Every \$100.	8. Amount of Tax.	9. Remarks.
1	Alice M. B. Valentine	over 21	Wife	Dollars. Cents. Dollars. Cents. Dollars. Cents. Dollars. Cents.					
2	Samantha G. Valentine	"	Sister	86,200 92	86,200 92	None	None	None	
3	Francis V. Norvell	"	Niece	3,000 00	3,000 00	"	"	"	
4	Edward C. Valentine	"	"	3,000 00	3,000 00	"	"	"	
5	J. J. Valentine Jr.	"	Son	17,502 91		17,502 91	75	131 27	
6	William George Valentine	under 21	"	17,502 91		17,502 91	75	131 27	
7	Ethel Stein Valentine	over 18	Daughter	17,502 91		17,502 91	75	131 27	
8	Dudley B. Valentine	under 21	Son	31,416 89		31,416 89	1 12½	353 44	
9	Eliza R. Valentine	under 18	Daughter	21,761 40		21,761 40	75	163 21	
10	Philip C. Valentine	under 21	Son	35,676 41		35,676 41	1 12½	401 36	
11				31,038 41		31,038 41	1 12½	349 18	
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
				Total .....	264,602 76	92,200 92		172,401 84	1661 00

This return is an amended return made at the suggestion of the revenue officers and is paid under protest, as the undersigned claims that none of the contingent interests above named vested prior to July 1st, 1902.

Dated at San Francisco, this 29th day of April, 1903.

UNION TRUST COMPANY OF SAN FRANCISCO.

(Signed) CHAS. J. DEERING.

Chas. J. Deering do swear that the above statement is, to the best of my knowledge and belief, just and true, and that I have taken all the means in my power to make it so.

(Signed) CHAS. J. DEERING.

Subscribed and sworn to before me this 30 day of April, A. D. 1903.

[Seal] (Signed) D. B. RICHARDS,  
Notary Public, San Francisco, Cal. [51]

**Exhibit No. 5.**

UNITED STATES INTERNAL REVENUE.  
LEGACIES AND DISTRIBUTIVE SHARES.

Sections 29 and 30, Act of June 13, 1898, as Amended by Sections 10 and 11 of an Act Approved March 2, 1901.

SCHEDULE of Stocks, Bonds, Notes, Securities, and other personal property in charge or trust of Union Trust Company of San Francisco as Executor, said property passing from John J. Valentine, deceased, of the City of Oakland County of Alameda and State of California, who deceased upon the 21 day of December, 1901, to the persons mentioned in

the accompanying Form No. 419; also the par value of said Securities and their market value at the date of the death of the testator.

## STOCKS.

No. of Shares.	Description of.	Total Par Value.	Total Market Value.
1.	2.	3.	4.
600	Pac. Gas Improvement Co.	\$	\$ 24000.00
200	S. F. Gas and Electric Co.		9000.00
1190	Pac. States Tel. & Tel. Co.		142800.00
12	Pac. Surety Co.		1200.00
50	Saratoga & Los Gatos Real Estate Assn.		2500.00
800	Wells Fargo & Co.		168000.00
		<hr/>	
Total . . . . .		\$ . . . . .	\$347500.00

[52]

## PROMISSORY NOTES.

No. of.	Description.	Par Value.	Actual Value.
1.	2.	3.	4.
1.	Promissory note of Charles S. Hemphill, which said note was dated Dec. 2, 1895, and was by said Hemphill paid in full with the sum of \$2340.00, on May 3, 1902 . . . . .	\$	\$
		<hr/>	
Total forward . . . . .		\$	\$2340.00

[53]

CASH AND MISCELLANEOUS.

1.	2.
Household furniture, goods, fixtures and \$ personal property in the former house of deceased, including library, statuary, stable, horses, harness and carriages . . . . .	10000.00
Cash . . . . .	2082.83
Dividend accruing on securities prior to decease of testator, as follows:	
Pac. Surety Co. . . . .	18.00
Pac. Tel. & Tel. Co. . . . .	1785.00
Wells-Fargo & Co. . . . .	3950.00
“ “ “ “ . . . . .	50.00
Proceeds of two Life Insurance Policies from N. Y. Life Insurance Company	15000.00
From Estate of Geo. Ladd. . . . .	229.20
	\$33115.03

First Dist., State of California.

Schedule of Stocks, Bonds, Notes, other Securities,  
and other Personal Property. Estate of John J.  
Valentine, Deceased.

Union Trust Company of San Francisco, Executor.

Examined and approved by me this — day of  
———, 190—.

JOHN C. LYNCH, Collector.

Assessment Division. [54]

**Exhibit No. 6.**NOTICE OF AND DEMAND FOR LEGACY  
TAXES ASSESSED.UNITED STATES INTERNAL REVENUE,  
OFFICE OF THE COLLECTOR OF INTERNAL  
REVENUE,

First District, State of California.

May 22nd, 1903.

List for Month  
of April, 1903

Div. . . . .

Union Trust Co., Executor in Estate of John J. Val-  
entine.

You are hereby notified that a tax, under the Internal-Revenue Laws of the United States, amounting to \$1,661.00/100 Dollars, the same being a tax upon Legacies and Distributive Shares, has been assessed against you by the Commissioner of Internal Revenue, and transmitted by him to me for collection. Demand is hereby made for this tax, which is due and payable before distribution to the legatees or any parties entitled to beneficial interest therein, and unless paid before the day of distribution, it will become my duty to collect the same with a penalty of five per centum additional, and interest at one per centum per month.

Payment may be made to John C. Lynch at San Francisco.

JOHN C. LYNCH,  
Collector.

(Bring this notice with you.) [55]



**Exhibit No. 7.**

No. 741764.

UNITED STATES INTERNAL REVENUE,  
Collector's Office, First District of California.

(Form No. 1)

Revised April 28, 1876.

May 27, 1903.

RECEIVED of UNION TRUST CO. Executor,  
one thousand six hundred Sixty one & 00/100 Dol-  
lars, Tax on Legacy—Estate of

JOHN J. VALENTINE \$1661.00—San  
Francisco .....\$  
Unassessed penalty .....\$  
Interest—years—months .....\$

---

\$1661.00

Said amount of Tax being assessed on Legacy list  
for April, 1903, \$1661.00.

JOHN C. LYNCH,  
Collector. [56]

**Exhibit No. 8.**

San Francisco, Cal., May 26th, 1903.

To the Hon. J. C. Lynch,  
Collector, Internal Revenue,  
First District of California.

We hand you herewith our check for \$1,661.00, the  
same being paid by the Union Trust Company of San  
Francisco as Trustee of Edward Cahill Valentine;  
J. J. Valentine, Jr.; William George Valentine;  
Ethel Stein Valentine, Dudley B. Valentine; Eliza

R. Valentine and Phillip C. Valentine, as and for internal revenue tax under the Act of June 13th, 1898, as amended by Act approved March 2nd, 1901, which sum is paid by said Union Trust Company under protest, because they claim that none of the said estate has been distributed to the beneficiaries under the trust in the will of John J. Valentine, deceased, and is a contingent interest which was not vested prior to July 1st, 1902, and is therefore relieved from the tax under and by virtue of an Act of Congress entitled "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable or educational character, for the encouragement of art," etc., passed June 27, 1902.

Respectfully,

UNION TRUST COMPANY OF SAN  
FRANCISCO,

Trustee under the trusts created by the Will of John J. Valentine, deceased, formerly executor of the last will and testament of John J. Valentine, deceased.

By I. W. HELLMAN, Jr.,  
Vice-President and Manager.  
CHAS. J. DEERING,  
Secretary. [57]

**Exhibit No. 9.**

CLAIM UNDER SERIES 7, NO. 14, REVISED,  
AND SERIES 7, NO. 27, SUPPLEMENT NO.  
1, FOR TAXES IMPROPERLY PAID, OR  
REFUNDABLE UNDER REMEDIAL STAT-  
UTES AND FOR AMOUNTS PAID FOR  
STAMPS USED IN ERROR OR EXCESS.

U. S. INTERNAL REVENUE.

State of California,  
City and County of San Francisco,—ss.

I. W. HELLMAN, Jr., of the City of San Francisco and State and County aforesaid, being duly sworn according to law, deposes and says, that he is the manager of Union Trust Company of San Francisco, a corporation, that it is engaged in the business of a trust company for trust purposes; that upon the 28th day of May, A. D. 1903, it was assessed an internal-revenue tax of Sixteen hundred and sixty-one (\$1661.00) dollars, because of alleged taxes due from heirs of the Estate of John J. Valentine, deceased, for Inheritance tax, which amount it afterwards, on the 28th day of May, A. D. 1903, paid to John C. Lynch, Esq., Collector of Internal Revenue for the First District of California, and which amount, as this deponent verily believes, should be refunded for the reasons, set forth in the paper hereto attached and marked Exhibit "A."

And this deponent now claims that, by reason of the payment of the said sum of Sixteen Hundred and Sixty-one (\$1661.00) it is justly entitled to have the sum of sixteen hundred and sixty-one (\$1661.00)

dollars refunded, and it now asks and demands the same or such greater amount as the Commissioner of Internal Revenue may find to have been erroneously paid, or to be refundable under remedial statutes. And this deponent further makes oath that he has not heretofore presented any claim for the [58] refunding of the above amount or any part thereof.

I. W. HELLMAN, Jr.,

For Union Trust Company of San Francisco, Executor of the last Will and Testament of John J. Valentine.

Sworn to and subscribed before me, this 10th day of June, A. D. 1903.

[L. S.]

D. B. RICHARDS,

Notary Public. [59]

EXHIBIT "A."

That said payment was made under protest by said UNION TRUST COMPANY OF SAN FRANCISCO, on the ground that none of the contingent interests of the heirs on which the tax was levied had become vested prior to July 1st, 1902:

That in that behalf deponent says:

That John J. Valentine died on the 21st day of December, 1901, leaving a will which was duly admitted to probate by the Superior Court of the County of Alameda, State of California, and the said UNION TRUST COMPANY OF SAN FRANCISCO was duly appointed as the Executor of the last Will and Testament of said deceased, and, until the distribution under said estate to it as trus-

tee, continued to act as such Executor :

That no distribution of said estate of any kind took effect until the 11th day of March, 1903, and, on said last named date, there was distributed to UNION TRUST COMPANY of SAN FRANCISCO, in trust for the following named beneficiaries, personal estate of the value set opposite their respective names, viz. :

Edward C. Valentine.....	\$17,502.91
William George Valentine.....	17,502.91
Ethel Stein Valentine.....	31,416.89
Dudley B. Valentine.....	21,761.40
Eliza R. Valentine.....	35,676.41
Philip C. Valentine.....	31,038.41
J. J. Valentine, Jr.....	17,502.91

to be held by it in trust and the income thereon paid to the said beneficiaries until the youngest of said children should have attained his or her majority ;

That Philip C. Valentine is the youngest of said children, and will reach his majority on the 7th day of May, 1920, and not before ; [60]

That none of said children have any vested interests whatsoever in any portion of said estate, save and except the income thereof ;

That said income in each instance is of so small amount that the annuity value thereof under the Rules of the Internal Revenue Department for the purposes of Legacies is much less than ten thousand dollars, and is in fact in the neighborhood of one thousand dollars.

That all of these facts were set forth in the original return made by the said Executor and Trustee, but

the Internal Revenue Department refused to accept the same unless the same should be amended in such a way as to require the payment by it of \$1661.00 in proportions as follows:

Edward C. Valentine.....	\$131.27
William George Valentine.....	131.27
Ethel Stein Valentine.....	353.44
Dudley B. Valentine.....	163.21
Eliza R. Valentine.....	401.36
Phillip C. Valentine.....	349.18
J. J. Valentine, Jr.....	131.27
	<hr/>
	\$1,661.00

which was done under protest.

That none of said payments were required by law, and all of them were made by the Executor because of the fact that the officers of the Department required that it should be paid before the protest could be entered.

[Endorsed]: Filed May 19, 1905. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.  
[61]



**Summons.**

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee Under the Trust Declared by the Last Will of JOHN J. VALENTINE, and EDWARD C. VALENTINE, DUDLEY B. VALENTINE, ELIZA R. VALENTINE, PHILIP C. VALENTINE, and J. J. VALENTINE, Jr., ETHEL STEIN VALENTINE and WILLIAM GEORGE VALENTINE,  
Plaintiffs,

vs.

JOHN C. LYNCH, Collector of Internal Revenue for the First District of California,  
Defendant.

Action Brought in the Said Circuit Court, and the Complaint Filed in the Office of the Clerk of Said Circuit Court, in the City and County of San Francisco.

The President of the United States of America, Greeting: To John C. Lynch, Collector of Internal Revenue for the First District of California, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the Complaint in an action entitled as above, brought against you in the Circuit Court of the United States, Ninth Circuit, in and for the

Northern District of California, within ten days after the service on you of this Summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiffs will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or they will apply to the Court for any other relief demanded in the Complaint. [62]

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 19th day of May, in the year of our Lord one thousand nine hundred and five, and of our Independence the one hundred and twenty-ninth.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beaizley,

Deputy Clerk.

United States Marshal's Office,  
Northern District of California.

I hereby certify that I received the within writ on the 19 day of May, 1905, and personally served the same on the 19 day of May, 1905, upon John C. Lynch, Collector of Internal Revenue for the 1st Dist. of Cal., by delivering to, and leaving with John C. Lynch, as Collector of Internal Revenue for the 1st District of California. Said defendant named therein, personally, at the City and County of San Francisco in said District, a certified copy thereof,

together with a copy of the Complaint, attached thereto.

JOHN H. SHINE,

U. S. Marshal.

By Geo. H. Burnham,

Deputy.

San Francisco, May 19th, 190—.

[Endorsed]: Filed May 20th, 1905. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy, Clerk. [63]

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*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee Under the Trust Declared by the Last Will of JOHN J. VALENTINE and EDWARD C. VALENTINE, DUDLEY B. VALENTINE, ELIZABETH R. VALENTINE, PHILIP C. VALENTINE, and J. J. VALENTINE, Jr., ETHEL STEIN VALENTINE and WILLIAM GEORGE VALENTINE,

Plaintiffs,

vs.

JOHN C. LYNCH, Collector of Internal Revenue for the First District of California,

Defendant.

**General Demurrer.**

Comes now the defendant in the above-entitled ac-

tion and demurs to the plaintiff's complaint upon the ground—

That said complaint does not state facts sufficient to constitute a cause of action;

Wherefore, defendant prays that said action be dismissed and for his costs.

ROBT. T. DEVLIN,

United States Attorney, Attorney for Defendant.

Due service of within Demurrer admitted on Feby. 17th, 1906.

MARSHALL WOODWORTH and  
HELLER & POWERS,

Attys. for Plff.

[Endorsed]: Filed February 23, 1906. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy. [64]

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At a stated term, to wit, the July term, A. D. 1908 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 3d day of August, in the year of our Lord one thousand nine hundred and eight. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 13,761.

UNION TRUST CO. OF S. F. et al.

vs.

JOHN C. LYNCH, Col., etc.

**Order Overruling Demurrer.**

Defendant's demurrer to the complaint herein

came on this day to be heard and by consent of George Clark, Esq., Assistant United States Attorney, it is ordered that said demurrer be and the same is hereby overruled, with leave to the defendant to answer within forty-five days. [65]

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*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 13,761.

UNION TRUST CO. OF S. F.

vs.

JOHN C. LYNCH, Collector of Internal Revenue,  
etc.

**Order of Substitution of Defendant.**

It appearing that this suit was brought against John C. Lynch, as Collector of Internal Revenue for the First Collection District of California, and it further appearing that the subject matter of said suit relates to the official liability of said John C. Lynch, as such Collector of Internal Revenue, and it further appearing that after the filing of said suit the said John C. Lynch resigned on October 1st, 1907, as such Collector of Internal Revenue, and that his resignation was duly accepted to take effect on October 1st, 1907, and that August E. Muentner was appointed Collector of Internal Revenue in the place and stead of said John C. Lynch, and that said August E. Muentner duly qualified as such Collector of Internal Revenue on October 1st, 1907, and now is the duly appointed, qualified and acting Collector

of Internal Revenue for the First Collection District of California;

IT IS NOW HERE ORDERED, that August E. Muentner be substituted as defendant in the place and stead of John C. Lynch, and that said August E. Muentner be substituted as Collector of Internal Revenue, and that said suit be hereafter entitled and maintained against said August E. Muentner, as Collector of Internal Revenue.

WM. C. VAN FLEET,  
Judge. [66]

[Endorsed]: Filed Sept. 14, 1908. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk.  
[67]

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At a stated term, to wit, the July term, A. D. 1908, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 14th day of September, in the year of our Lord one thousand nine hundred and eight. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 13,761.

UNION TRUST COMPANY, etc.

vs.

JOHN C. LYNCH, Collector, etc.

**Order Substituting Defendant.**

Upon motion of Marshall B. Woodworth, Esq., attorney for plaintiff, and it appearing to the Court



that John C. Lynch has been succeeded by August E. Muentner, as Collector of Internal Revenue, etc., and by consent of the United States Attorney; it is ordered that August E. Muentner, Esq., as Collector, etc., be and he is hereby substituted in the place and stead of John C. Lynch as defendant herein. [68]

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*In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

No. 13,761.

UNION TRUST CO. OF SAN FRANCISCO,  
Plaintiff,

vs.

AUGUST E. MUENTER, Collector of Internal  
Revenue,  
Defendant.

**Stipulation as to Certain Exhibits and Waiving  
Jury Trial.**

It is hereby stipulated and agreed that the copy of the "Assessment List" of the First District of California, for the month of April, 1903, as certified to by the Collector of Internal Revenue for the First District of California, may be introduced in evidence as an exhibit in the case of Union Trust Co. of San Francisco vs. August E. Muentner etc., No. 13,761, and that the same general form of assessment was made in the following cases, numbered, respectively, No. 14,549, No. 14,555, No. 14,557, No. 14,568, No. 14,615, No. 14,623, No. 14,638, and No. 14,730; and it is hereby further stipulated and agreed that the ex-

hibits attached to the complaint in the case of Union Trust Co. of San Francisco, vs. August E. Muentner etc., No. 13,761, and the other exhibits introduced in that case for the purpose of illustrating the general forms used in the assessment and collection of taxes on legacies, may be used as exhibits in each of the following cases, to wit: No. 14,549, No. 14,555, No. 14,557, No. 14,568, No. 14,615, No. 14,623, No. 14,638; and No. 14,730; it is hereby further stipulated and agreed that a jury trial is hereby waived in writing by the respective parties and that the [69] above-entitled case, and cases, No. 14,549, No. 14,555, No. 14,557, No. 14,568, No. 14,615, No. 14,623, No. 14,638, and No. 14,730, may be tried by the Court without a jury, and that this stipulation may be entered *nunc pro tunc* as of November 20th, 1908;

It is further stipulated and agreed that the dates of the assessments by the Commissioner of Internal Revenue are, as testified to by J. M. Fletcher, as the same appears in his testimony, and are as follows:

Estate of	Date of Return on Forms 419 & 494.	Date of As- sessment by the Commis- sioner.	List on Which Assessed.
John J. Valentine	April 30, 1903	May 16, 1903	April list, 1903
Sidney M. Smith	March 30, 1903	April 22, 1903	March list, 1903
Alexander McDonald	April 1, 1903	April 22, 1903	March list, 1903
Richard Hellman	April 29, 1903	May 16, 1903	April list, 1903
Robert R. Hind	May 6, 1903	June 17, 1903	May list, 1903
John Rosenfeld	June 29, 1903	July 20, 1903	June list, 1903
Caroline E. Cogswell	Dec. 16, 1903	Jany. 20, 1904	Dec. list, 1903
Wm. P. Morgan	June 20, 1904	August 8, 1904	June list, 1904
Geo. D. Bliss	Dec. 4, 1903	Jan. 20, 1904	Dec. list, 1903

This shall not be deemed a stipulation as to the character of the interests taxed.

Dated March 8, 1908.

ROBT. T. DEVLIN,  
U. S. Atty. C.  
MARSHALL B. WOODWORTH,  
Attorney for Plaintiffs.

ORDER.

In pursuance of the above stipulation, it is hereby ordered that this stipulation be filed *nunc pro tunc* as of November 20th, 1908.

March 27, 1909.

WM. C. VAN FLEET,  
U. S. Judge.

[Endorsed]: Filed Mch. 27, 1909. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [70]

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*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee Under the Trust Declared by the Last Will of JOHN J. VALENTINE, and EDWARD C. VALENTINE, ETHEL STEIN VALENTINE, J. J. VALENTINE, WILLIAM GEORGE VALENTINE, DUDLEY B. VALENTINE, ELIZA R. VALENTINE, PHILIP C. VALENTINE,

Plaintiffs,

vs.

AUGUST E. MUENTER, Collector of Internal Revenue for the First Collection District of California (Substituted for JOHN C. LYNCH, Formerly Such Collector),  
Defendant.

**Answer.**

Comes now the defendant above named, and answering plaintiffs' complaint, denies and alleges as follows:

I.

Admits the allegations of paragraph I of said Complaint.

II.

Admits the allegations of paragraph II of said Complaint.

III.

Admits the allegations of paragraph III of said Complaint.

IV.

Admits that Philip C. Valentine will reach his majority May 7th, 1920.

This defendant denies that none of the said children has a vested interest in any portion of the said estate so left in trust. On the contrary, the defendant alleges that each of the said children is vested with the right to receive the income from said property and the right to receive the residue of the [71] said property when the youngest of said legatees shall have attained his or her majority.

Defendant further alleges that while the enjoyment of the *corpus* or residuary interest of the said trust funds is, under the terms of the will of said de-

ceased, deferred until the time last hereinbefore mentioned, yet the said legatees were vested in possession and enjoyment of the income of the said property and the right to receive such income for a certain period, to wit, until the youngest of the said legatees shall have attained the age of majority, and that each of the said legatees was also vested with the right to the future enjoyment of the property respectively bequeathed in trust.

V.

Defendant admits that the said tax has never been refunded.

VI.

Defendant is advised and believes, and therefore alleges, that certain of the legatees mentioned in the complaint did in fact receive legacies from the estate of the said John J. Valentine, deceased, which said legacies passed upon the death of the said deceased in immediate possession and enjoyment to such legatees, and that such legacies were of a clear value in excess of Ten Thousand (10,000) Dollars. That said legacies were received by the executor of the will of said deceased. That this defendant is unable to state particularly the exact amounts of these said legacies, for the reason that all information in regard thereto is possessed by the plaintiffs herein, and though often requested so to do, they have failed and each of them has failed to disclose to this defendant or to his predecessor in office the true nature and amount of such legacies.

That this defendant for the same reason, is unable to state the number of such legacies, or the particular

legatees receiving [72] the same. This defendant, however, asks that the plaintiffs in this case be compelled to make a full and complete disclosure in regard to the affairs of the estate of the said John J. Valentine, deceased, and as to the amounts of the legacies in fact bequeathed under the will of the said deceased and received by the said legatees, in order that if any judgment is granted to the plaintiffs herein, proper deductions may be made on account of any such legacies exceeding in value the sum of Ten Thousand (10,000) Dollars.

That the said legacies referred to in this paragraph were legacies derived from arising out of personal property belonging to the estate of said deceased, and passing under the will of said deceased and held in charge by the executor of said will upon the death of said deceased, and the admission of his will to probate.

Defendant further alleges that he has no possible means of ascertaining any of the facts other than those mentioned herein in regard to the said legacies referred to in this paragraph.

That no legacy tax of any kind has ever been levied or assessed upon the said legacies mentioned in this paragraph, excepting that the legacy tax mentioned in the complaint herein, has been levied, assessed and collected.

Wherefore, defendant prays that the plaintiff take nothing by this action, and for costs.

ROBT. T. DEVLIN,

United States Attorney, Attorney for Defendant.



United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

August E. Muentner, being first duly sworn, deposes and says: That he is the Collector of Internal Revenue for the First Collection District of California; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to such matters, that he believes it to be true.

AUG. E. MUENTER.

Subscribed and sworn to before me this 9th day of October, A. D. 1908.

[Seal]

W. B. MALING,  
Deputy Clerk U. S. Circuit Court, Northern District  
of California.

Service of the within Answer by copy admitted this 8th day of Oct., 1908.

MARSHALL B. WOODWORTH,  
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 9, 1908. Southard Hoffman, Clerk. By W. B. Maling, Deputy. [74]

At a stated term, to wit, the November term, A. D. 1910, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Courtroom in the City and County of San Francisco, on Wednesday, the 7th day of December, in the year of our Lord one thousand nine hundred and ten. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO et al.

vs.

AUGUST E. MUENTER, etc.

**Order for Findings.**

This cause came on this day for trial before the Court, sitting without a jury, Marshall B. Woodworth, Esq., appearing on behalf of the plaintiffs and George Clark, Esq., Assistant United States Attorney, appearing on behalf of the defendant. Evidence on behalf of the respective parties was introduced and closed and the cause was submitted to the Court for consideration and decision, and the same being fully considered, it was ordered that findings be filed and judgment entered herein in favor of plaintiffs for the sum of \$1661.00, with interest thereon and for costs. [75]

*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO

vs.

AUGUST E. MUENTER, etc.

**Findings of Fact and Conclusions of Law.**

This cause having been tried by the Court without a jury, a jury having been waived, the Court, after due consideration, makes the following Findings of Fact and Conclusions of Law:

I.

That the plaintiff, Union Trust Company of San Francisco, was, at all of the times in the complaint alleged, and now is, the duly appointed, qualified, and acting trustee, under the trust declared by the last will and testament of John J. Valentine.

II.

That at all of the times in said complaint alleged, Edward C. Valentine, William George Valentine, Ethel Stein Valentine, Dudley B. Valentine, Eliza R. Valentine, Philip C. Valentine, and J. J. Valentine, Jr., were, and now are, the beneficiaries under the trust declared by the last will and testament of John J. Valentine, deceased.

III.

That John C. Lynch was the duly appointed, qualified and acting Collector of Internal Revenue for the

First Collection District of California, at all of the times mentioned in said complaint, and up to October 1, 1907, at and from which time, [76] August E. Muentner became the duly appointed, qualified, and acting Collector of Internal Revenue for the First Collection District of California, and ever since has been, and now is such Collector of Internal Revenue, and was duly and regularly substituted as party defendant in the place and stead of John C. Lynch.

#### IV.

That John J. Valentine died on or about December 21, 1901, in the County of Alameda, State of California, being a resident thereof at the time of his death and leaving property therein, and leaving a last will and testament, which was thereafter admitted to probate, in accordance with proceedings taken under the laws of the State of California, on or about December 30, 1901.

#### V.

That, according to the terms of said last will and testament, Union Trust Company of San Francisco was duly named and appointed the executor of said last will and testament of John J. Valentine, deceased.

#### VI.

That, on or about December 30, 1901, the said Superior Court duly made and entered its order admitting said last will and testament to probate and appointed said Union Trust Company of San Francisco executor thereof, which thereafter duly qualified and continued to act as executor until the close of the administration of said estate, to wit, on or

about March 11, 1903.

VII.

That after proceedings regularly had and taken in said probate proceedings, by an order and judgment of said Superior Court, duly given and made on March 11, 1903, the property of [77] said estate was, by final decree of distribution, distributed to Union Trust Company of San Francisco as trustee under the trust declared by the said last will and testament, and included in said property so distributed in trust to said Union Trust Company of San Francisco, as aforesaid, was personal property to be held in trust for the beneficiaries above named, and of the values set opposite their respective names viz.: Edward C. Valentine, personal property

of the value of .....	\$17,502.91
William George Valentine.....	17,502.91
Ethel Stein Valentine.....	31,416.89
Dudley B. Valentine.....	21,761.40
Eliza R. Valentine.....	35,676.41
Philip C. Valentine.....	31,038.41
J. J. Valentine, Jr.....	17,502.91

VIII.

That the above-named values of the personal property to be held in trust, and which were held in trust, for the above-named beneficiaries were the values as assessed on May 16, 1903, by said John C. Lynch, the then Collector of Internal Revenue.

IX.

That said personal property, to be held in trust for the above-named beneficiaries, of the values set opposite their respective names, as above stated, was to

be held, and is now being held under the terms of the last will and testament of said John J. Valentine, in trust, by said Union Trust Company of San Francisco, as such trustee, and the income thereon paid by said Union Trust Company of San Francisco to the said beneficiaries, until the youngest of said children and beneficiaries, Philip C. Valentine, shall have attained his majority.

X.

That Philip C. Valentine is the youngest of said children and beneficiaries, and will reach his majority on May 7, 1920, and not before. [78]

XI.

That said incomes derived from said legacies above named, of the values above set out, to be held in trust as aforesaid, do, not, nor does any one of them amount to the sum of \$10,000 each year, or at all.

XII.

That on May 16, 1903, said John C. Lynch, the then Collector of Internal Revenue for the First Collection District of California, acting under and by virtue of the provisions of the Act of Congress of June 13, 1898, as amended by the Act of Congress of March 2, 1901, and the rules and regulations of the United States Internal Revenue Department in such cases made and provided, assessed the Union Trust Company of San Francisco, the plaintiff in this action, an Internal Revenue Tax, aggregating the sum of \$1661.00, said tax being assessed upon the legacies distributed to said Union Trust Company of San Francisco, in trust as above stated, for the above-named beneficiaries as follows:



To the legacy of \$17,502.91 in favor of Edward C. Valentine, a legacy tax of \$131.27; to the legacy of \$17,502.91, in favor of William George Valentine, a legacy tax of \$131.27; to the legacy of \$31,416.89, in favor of Ethel Stein Valentine, a legacy tax of \$333.44; to the legacy of \$21,761.40, in favor of Dudley B. Valentine, a legacy tax of \$163.21; to the legacy of \$35,676.41, in favor of Eliza R. Valentine, a legacy tax of \$401.36; to the legacy of \$31,038.41, in favor of Philip C. Valentine, a legacy tax of \$349.18; to the legacy of \$17,502.91, in favor of J. J. Valentine, Jr., the legacy tax of \$131.27; said legacy taxes aggregating the sum total, as above stated, of \$1661.00. [79]

### XIII.

That on May 27, 1903, the Union Trust Company of San Francisco, paid to the then Collector of Internal Revenue for the first Collection District of California the sum of \$1661.00, which sum was paid by the said Union Trust Company of San Francisco to the then Collector of Internal Revenue for and on behalf of the beneficiaries above named.

### XIV.

That said assessment and payment of said tax of \$1661.00 as aforesaid was made under protest.

### XV.

That said John C. Lynch, the then Collector of Internal Revenue and said Commissioner of Internal Revenue and said August E. Muentner, the present defendant and successor in office of said John C. Lynch, have at all times refused to refund said sum of \$1661.00, or any part thereof, and that the whole

and every part thereof is still remaining unpaid and unrefunded.

From which foregoing Findings of Facts, I deduce and make and enter the following conclusions of law :

I.

That the Union Trust Company of San Francisco is the proper party plaintiff and has the legal capacity to institute and maintain this action.

II.

That the personal property and legacies distributed under the terms of the last will and testament of John J. Valentine, deceased, to the Union Trust Company of San Francisco, in trust, and to be held in trust for the above-named beneficiaries, were, and each of them was, contingent beneficial interests, which did not vest absolutely in possession or enjoyment within the meaning of the Act of Congress of June 27, 1902, [80] prior to the repeal of the Act of Congress of June 13, 1898, as amended by the Act of Congress of March 2, 1901, which took effect on July 1, 1902.

III.

Said taxes, so assessed, imposed and paid as aforesaid upon the several legacies as aforesaid, were, and each of them is, illegal and erroneous, and each of them was erroneously and illegally assessed, imposed and collected without authority of law.

IV.

That the plaintiff recover judgment against the defendant, as Collector of Internal Revenue for the First Collection District of California, in the sum of \$1661.00, being the aggregate amount of taxes

assessed, imposed and paid as aforesaid, with the interest on said sum at the rate of seven per cent per annum from May 27, 1903, the same being the date when said taxes were paid to the then Collector of Internal Revenue, and with interest from date of said judgment and costs of suit as taxed.

Dated this 18th of January, 1911.

WM. C. VAN FLEET,  
Judge.

Approved.

GEO. CLARK,  
Asst. U. S. Atty.

[Endorsed]: Filed Jan. 18, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

[81]

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*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee Under the Trust Declared by the Last Will of JOHN J. VALENTINE, and EDWARD C. VALENTINE, DUDLEY B. VALENTINE, ELIZA R. VALENTINE, PHILIP C. VALENTINE and J. J. VALENTINE, Jr., ETHEL STEIN VALENTINE and WILLIAM GEORGE VALENTINE,

Plaintiffs,

vs.

AUGUST E. MUENTER, Collector of Internal Revenue for the First District of California,  
Defendant.

### **Judgment on Findings.**

This cause having come on regularly for trial upon the 7th day of December, 1910, being a day in the November, 1910, Term of said court, before the Court, sitting without a jury, a trial by jury having been duly waived by stipulation filed, Marshall B. Woodworth, Esq., having appeared as attorney for plaintiffs, and George Clark, Esq., Assistant United States Attorney, having appeared as attorney for the defendant, and the trial having been proceeded with upon the 7th day of December in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced, and the evidence having been closed, and the cause having after arguments by the attorneys for the respective parties been submitted to the Court for consideration and decision, and the Court, after due deliberation, having filed its findings in writing and ordered that judgment be entered herein in accordance therewith and for costs;

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that Union Trust Company of San Francisco (a Corporation), as trustee under [82] the trust declared by the Last Will of John J. Valentine, and Edward C. Valentine, Dudley B. Valentine, Eliza R. Valentine, Philip C. Valentine, and J. J. Valentine, Jr., Ethel Stein Valentine and William George Valentine, plaintiffs, do have and recover of and from

August E. Muentner, as Collector of Internal Revenue for the First District of California, defendant, the sum of Two Thousand Five Hundred Forty-nine and 49/100 (\$2549.49) Dollars, together with their costs in this behalf expended, taxed at \$——.

Judgment entered January 18, 1911.

SOUTHARD HOFFMAN,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

A True Copy. Attest:

[Seal] SOUTHARD HOFFMAN,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Endorsed]: Filed January 18, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [83]

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*In the Circuit Court of the United States, Ninth  
Judicial Circuit, in and for the Northern Dis-  
trict of California.*

No. 13,761.

UNION TRUST CO. OF S. F. (a Corporation), etc.  
et al.

vs.

AUGUST E. MUENTER, etc.

**Certificate to Judgment-Roll.**

I, Southard Hoffman, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify

that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled matter.

Attest my hand and the seal of said Circuit Court this 18th day of January, 1911.

[Seal]

SOUTHARD HOFFMAN,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Endorsed]: Filed January 18, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [84]

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*In the Circuit Court of the United States, Ninth  
Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRAN-  
CISCO

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,615.

LOUIS ROSENFELD et al.

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,567.

ELEANOR CAMPBELL O'KELLY

vs.

AUGUST E. MUENTER, as Collector, etc.



No. 14,796.

ALFRED FRIEDRICH et al.

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,730.

GEORGE D. BLISS, Jr.

vs.

AUGUST E. MUENTER, as Collector, etc.

**Consolidated Bill of Exceptions.**

A trial of the above-entitled causes was begun on November 20th, 1908, before the Court sitting without a jury, a jury having been expressly waived in writing by the plaintiffs and the defendant.

Marshall B. Woodworth, Esq., appeared as attorney for the plaintiffs, and Robt. T. Devlin, United States Attorney, appeared as attorney for the defendant.

By stipulation of the parties it was agreed that all the [85] said causes should be consolidated for the purpose of trial and that all the testimony taken other than that relating especially and particularly to a given cause of action should be deemed taken in support of or in defense of all of the various causes of action.

The trial of the said causes was concluded on the 7th day of December, 1910; at the conclusion of the trial the Court rendered judgment in favor of the plaintiffs for the amounts hereinafter shown.

At the trial of the said causes the following proceedings were had:

Mr. WOODWORTH.—If your Honor please, these are civil actions which are brought by executors of estates for the purpose of recovering from the Government taxes which were paid under the Spanish American war tax law, and paid unlawfully, as claimed by us.

(Mr. Woodworth here made a statement of the issues involved in the cases and referred to and explained the pleadings in the case of Union Trust Company vs. August E. Muentner, No. 13,761.)

Mr. CLARK.—Mr. Woodworth is right in saying that the Government desires proof with reference to the quantity of the estate which was received by these legatees. Before we had commenced this case, your Honor has recently ruled in construing a will very much similar to this, and rendering a decision in the case of Lynch vs. The Union Trust Company on appeal, that where a legatee is left nothing but the income from a trust estate, the *corpus* of the trust or of the fund to pass at some time in future, providing he lives that long, the legacy is contingent and does not pass into possession and enjoyment so it [86] can be taxed by the war revenue act of 1898. I maintain that it is purely a question of law. What we want counsel to show in this case, so as to protect the interest of the Government, is that the income or the amount received prior to the repeal of this Act by these legatees, any one of these legatees, was not the sum of \$10,000. Now, the other point goes to every one of these cases, that is, the point with relation to the date of death of John J. Valentine, who died within a year prior to July 1st,

1902; under the defense of counsel, and under some decisions, that being true, they would be entitled to recover here, providing the taxes were in each instance paid under protest but we want proof from counsel upon that fact in each instance.

The COURT.—You want the date of the death, the payment of the taxes under protest, and the amount of the income.

Mr. CLARK.—We concede the date of the death in every instance; we concede in every instance that the decedent died within a year prior to July 1st, 1902, the date of the repeal of the Act. What we want is proof from counsel that the moneys were paid under protest in these cases, and I want proof from counsel that there was not \$10,000 that passed prior to the date of the repeal of the Act by way of income, or by way of actual payment over to the legatee.

The COURT.—You mean prior to the date the repeal of the Act took effect.

Mr. CLARK.—Yes.

The COURT.—It could not have been paid prior to the repeal of the Act where all these parties died between the date of the repealing of the Act and the date it took effect.

Mr. CLARK.—We desire proof from counsel on the fact that the parties now suing have a right to sue, and while that seems [87] technical, I will say that since filing the Answer raising the point in this case, it was necessary for counsel to file new pleadings or new suits so as to bring in the proper parties plaintiff. Do you desire to go ahead with

that particular suit in which you filed the new pleadings? Do you desire to go ahead with the new suit which you filed?

Mr. WOODWORTH.—Yes.

Mr. CLARK.—It is stipulated that a general denial will be filed in that suit.

Mr. WOODWORTH.—Yes.

The COURT.—You can proceed now with any cases that you wish to take up.

Mr. WOODWORTH.—I am ready to proceed with the Union Trust Company case. I might state to your Honor that there is attached to the Complaint in the Union Trust Company of San Francisco against August Muentner a copy of the will, a certified copy, or a copy of a certified copy of the final decree of distributions, and a copy of what is known in the internal revenue regulations as form 490, which is the notice given by the executor to the Collector of Internal Revenue of the legacy.

The COURT.—Notice of what?

Mr. WOODWORTH.—It is the notice which the executor of the estate makes to the Collector. That is a matter required by the internal revenue rules.

The COURT.—That statement is the basis for the taxes.

Mr. WOODWORTH.—It is a statement of the legacies and distributive shares.

Mr. CLARK.—What exhibit is the notice that you refer to now, Mr. Woodworth?

Mr. WOODWORTH.—That is Exhibit No. 3. Then the legacy is Exhibit No. 4 as attached to the Complaint? [88]

Mr. CLARK.—I think Exhibit 4 is a copy of the will.

Mr. WOODWORTH.—It is marked Exhibit 4 here. The schedule attached to the Complaint, form No. 445, which is notice of the demand for the payment of the legacy by the Collector of Internal Revenue, the receipt for the payment of the taxes, which is attached to the Complaint. The written protest that was made at the time of payment, which is Exhibit No. 8, is attached to the Complaint, and the claim for refunding, upon form 456, is also attached to the Complaint.

The COURT.—Are those originals?

Mr. WOODWORTH.—Those are all copies, if your Honor please.

THE COURT.—Are you suggesting that they now go into the record?

Mr. WOODWORTH.—Yes, for the purpose of having the proof in a regular way.

The COURT.—Are you offering them in evidence? They are merely copies.

Mr. CLARK.—We have stipulated, if your Honor please, that they are correct.

The COURT.—There is no necessity of reading them into the record; they are all part of the pleadings, and that is a part of the record already.

**[Testimony of D. L. Clarke, for Plaintiff.]**

D. L. CLARKE, called as a witness for plaintiff, after being sworn, testified:

That he was the trust officer of the Union Trust Company of San Francisco, and had been for two and a half years and that he was acquainted with

(Testimony of D. L. Clarke.)

all of the matters in the estate of John J. Valentine of which the said Union Trust Company was the executor and of which it has been the trustee; that he was familiar [89] with the accounts of the estate from the inception of the administration thereof; that no income had been paid to any of the following named persons, Edward C. Valentine, Ethel S. Valentine, John J. Valentine, Jr., William G. Valentine, D. B. Valentine, Eliza B. Valentine and Philip Valentine, up to July 1st, 1902, and that no income under the provisions of the will of the deceased Valentine had accrued to any of the said persons up to July 1st, 1902, and that in fact no income accrued to any of the said named persons until some time after March 11th, 1903, the date of the decree of final distribution in the Estate of Valentine.

On cross-examination the witness stated that prior to the decree of final distribution in the Estate of Valentine the legatees named in the will received nothing whatever, the whole estate being distributed to the Union Trust Company of San Francisco, as trustee, that he was unable to state what income from the estate had accumulated during its administration and prior to final distribution; that roughly about three hundred thousand dollars worth of property was distributed to the legatees in trust under the terms of the will of Valentine; that the testator died on December 21st, 1901; that prior to July 1st, 1902, the income upon the trust estate was not sufficient, if divided in accordance with the terms



(Testimony of D. L. Clarke.)

of the will to amount in the case of any legatee to as much as ten thousand dollars, that is, each beneficiary, had the income been divided, would certainly have received less than ten thousand dollars; that he might be able to figure out just what the total of the income, prior to July 1st, 1902, would in fact be; that there was certain insurance money that went into the estate, but that this belonged to the surviving wife. [90]

After having been given an opportunity to make an estimate for the purpose of arriving at the income derived from the estate, the witness further testified on cross-examination: That the total value of the estate was made by considering both the real property and the personal property and that the value of the personal estate which went into the trust was \$170,914; that \$15,000 in life insurance went into the trust; the total value of all the personal property in the estate amounted to \$375,000; in addition there was real estate of the value of about \$50,000; only \$170,000 went into the trust because of many other specific legacies than those given to the children, because of the large family allowance, executors' commissions, heavy expenses of administration and the many claims which it was necessary to pay; that he was positive no more than one hundred and seventy thousand dollars was left to be turned into the trust fund and that no sum other than the one hundred and seventy thousand dollars or personal property of that value was ever distributed for the benefit of the legatees who were the

(Testimony of D. L. Clark.)

children of Valentine, deceased; that such cash as could be called income from this distributed property up to July 1st, 1902, did not exceed \$10,959, and that such sum was the entire gross income upon not only the personal property which was distributed in trust but also real property which was distributed; that he had estimated the income from the time of the death until said July 1st, 1902.

On redirect examination the witness stated that no sum amounting to \$10,000 had ever been paid to any of the persons named in the complaint from the death of the deceased to July 1st, 1902 or at any other time; that nothing had been paid up to April, 1902, the time of distribution and that there had not become due, up to July 1st, 1902, to any of the legatees of Valentine [91] from his estate, the sum of \$10,000.

On the resumption of the trial of the case of Union Trust Company vs. Muentner, No. 13,761, on the 7th day of December, 1910, further proceedings occurred as follows:

Mr. WOODWORTH.—The complaint in this case is made by the Union Trust Company of San Francisco as trustee under the trust declared by the last will of John J. Valentine and a number of other parties. The amount sued for is the sum of \$1,661. Mr. Clark in his answer admits the incorporation of the Union Trust Company of San Francisco and the capacity of the plaintiff to sue, in that he concedes that it was and now is a trustee under the

trust declared by the last will and testament of John J. Valentine. He concedes that the defendant was Collector of Internal Revenue at that time; he concedes that John J. Valentine died in the county of Alameda, State of California, on or about the 21st day of December, 1901, and that a copy of the will annexed to this complaint and marked Exhibit 1 is a copy of the will; he concedes that after proceedings taken in the regular manner the property was distributed to the Union Trust Company of San Francisco as trustee under the trust declared by the will of the deceased; and he concedes, among other things, that "said personal property to be held, and is now being held, in trust by said Union Trust Company of San Francisco as such trustee, and the income thereon paid by said Union Trust Company of San Francisco to the said beneficiaries, until the youngest of said children (said Philip C. Valentine) shall have attained his majority, (a copy of which said decree is hereto attached, marked Exhibit 2)."

Now, it is claimed in paragraph 4 of the complaint that Philip C. Valentine is the youngest of said children and will [92] reach his majority on the 7th day of May, 1920, and not before.

That none of the said children and beneficiaries hereinabove mentioned have any vested interest whatsoever in any portion of said estate, save and except the income thereon.

That said income in each instance is of so small amount that the annuity value thereof, under the rules of the Internal Revenue Department, for the purpose of assessing taxes on legacies, is much less

than \$10,000.00, and is, in fact, in the neighborhood of \$1,000.

With reference to that allegation, Mr. Clark in his answer contends that the legacies had become vested. That raises purely a question of law which your Honor, upon examining the will, will find is controlled by your Honor's decision in the Follis case; it is exactly the same question; and also by the Supreme Court of the United States in the case of *Vanderbilt vs. Eidman* and also in the *Hertz* case.

Mr. Clark admits that the proper steps were taken in filing a claim before the Collector of Internal Revenue, and thereafter taking an appeal to the Commissioner of Internal Revenue. He admits the payment of the tax to the Government; admits that the assessment was made as alleged in the complaint, and concedes that the money is still due, owing and unpaid. Am I correct in those allegations?

Mr. CLARK.—Yes, the allegations of the complaint and answer.

Mr. WOODWORTH.—As your Honor can see, there is only one question raised by Mr. Clark in that case, and that matter can be disposed of very quickly, so far as the proofs are concerned, and the law.

The COURT.—Just the character of the legacy.

[93]

Mr. WOODWORTH.—Was it vested or was it not?

Mr. CLARK.—You further admit that the value did not exceed \$10,000—

Mr. CLARK.—As I recall the point in that case, it was as to whether the proper parties are plaintiff.

Mr. WOODWORTH.—You admit that in your answer.

Mr. CLARK.—Do I admit in the answer they are the proper parties?

Mr. WOODWORTH.—Yes. I will read from your brief which is filed here—it seems to me a very technical point is raised. The Union Trust Company was appointed trustee, which you have admitted. It has paid this tax, it is the holder of this property for these children; it will hold this property until 1920, and it is the proper party to sue.

Mr. CLARK.—The tax was paid after the decree of distribution, the distribution to the Union Trust Company.

Mr. WOODWORTH.—Yes.

Mr. CLARK.—I think in that case the plaintiff should recover. I think that the fact that the tax was paid after the entry of the decree of distribution—the decree of distribution did contain an omnibus clause whereby the estate was distributed—all of the undescribed portion of the estate was distributed, two-third to the Union Trust Company, and one-third to the widow of the deceased. However, the trustees who are suing here did in fact pay the tax after the entry of the decree of distribution, and as they made the payment—

The COURT.—That would come within the rule—

Mr. CLARK.—That would remove it from any doubt as to whether the decree of distribution would cover this particular claim. I think in that case the plaintiff should recover. [94]



The COURT.—Let judgment in that case go for the plaintiff.

Mr. WOODWORTH.—The next case, if your Honor please, which was also before your Honor at a previous hearing, is the case of Louis Rosenfeld and Henry Rosenfeld, as trustees under the last will and testament of John Rosenfeld against August E. Muenier, and is numbered 14,615. That is a case precisely on all fours with the case of Union Trust Company vs. Muenier, just decided by your Honor, and in that case, if your Honor please, the admissions made by the pleadings are as follows: The answer admits that the defendant August E. Muenier is now and has been since the 1st day of October, 1907—

The COURT.—You do not need to state those things.

Mr. WOODWORTH.—I will now proceed to the important matters. The answer admits the death of John Rosenfeld on May 28, 1902, in the city of New York; it admits that according to the terms of his last will and testament Louis Rosenfeld and Henry Rosenfeld were duly named and appointed the executors of the last will and testament of John Rosenfeld.

That on or about June 15, 1902, letters testamentary of the said will were duly issued and granted to the said Louis Rosenfeld and Henry Rosenfeld by the Superior Court of the State of California, in and for the City and County of San Francisco. The answer admits the death of the decedent; it admits the fact that he left personal property; it admits the



imposition of this tax; it admits the payment of the tax; it admits the filing of a claim and also concedes a protest. The question raised by Mr. Clark is—he did not admit the capacity of the plaintiffs to [95] sue, to bring this suit. Mr. Clark was very fair in the case; he said that if the testimony should disclose that the trustees paid this tax that there should be a recovery against the Government. Now, the fact is, we take it, and I shall refer your Honor to the testimony taken at the previous hearing, on page 59 Mr. Henry Rosenfeld testified as follows (reading:) Beginning on page 59,—

“Q. Do you recall paying this legacy tax to the Government? A. Yes, sir.

“Q. Will you kindly state to his Honor just the circumstances under which you paid the tax. When were you first notified of the demand of the Government for this tax. Was it before July 1, 1902?

“A. It was July, 1903.

“Q. Almost a year afterward. What were the circumstances attending the demand and your eventually paying it?

“A. There was a demand made for the payment of the tax and I called on our attorney and asked him in relation to it.” That is not just what I want.

The COURT.—Is there any question that the trustee paid the tax?

Mr. CLARK.—I think, your Honor, the trustee did pay that tax. I think the decree of distribution was entered before the payment; that is my recollection of it.

Mr. WOODWORTH.—On July 13, 1903, the prop-

erty was distributed to the trustees, and the tax was not paid until afterwards.

Mr. CLARK.—Do you sue in the capacity here as trustee?

Mr. WOODWORTH.—As trustee.

Mr. CLARK.—Let me see your complaint.

Mr. WOODWORTH.—On the 29th of July, 1902, and the decree [96] was on July 13, 1903—subsequent to the decree.

Mr. CLARK.—I think, your Honor, the case is in the same state as the case of Union Trust Company vs. Muentner. Have you the will, Mr. Woodworth?

Mr. WOODWORTH.—I think the will is attached to the legacy return.

Mr. CLARK.—No, the wills are not here. Here is a copy of the will.

The COURT.—What is the provision of the will?

Mr. CLARK.—If the Court please, I am not going into Mr. Woodworth's case, but it seems to me that some of the provisions in this will do specifically bequeath the legacies which are of value over \$10,000, for instance, the second provision of the will, the amount not being left in trust at all, and of course so far as this tax was imposed that would be—so far as this tax was imposed upon a legacy which passed in trust to these trustees, the Government, under the ruling of the Circuit Court of Appeals of this Circuit would necessarily admit judgment would have to go against it; so far as that tax was imposed upon legacies which passed directly—and the clause of that will does contain a legacy which did pass

directly, and which amounted to \$10,000, why of course we would say there should be no recovery, because there is a clear, plain specific legacy. Now, I do not know what—

The COURT.—Should be no recovery?

Mr. CLARK.—Should be a recovery.

The COURT.—Then the case comes within the ruling in *Union Trust Company vs. Muentner*.

Mr. WOODWORTH.—Just exactly the same thing.

Mr. CLARK.—This tax was imposed upon—[97]

Mr. WOODWORTH.—The trust. Is that satisfactory?

Mr. CLARK.—I want to see if it was a tax imposed upon the trust estate.

Mr. WOODWORTH.—It was.

Mr. CLARK.—The amount involved in this case is over \$4,000. There is a series of legacies, at least six, which were taxed. Before consenting that the judgment should go against the Government in that case, I would prefer, inasmuch as counsel cannot specify exactly the provisions of the will, to look the matter over—before making any concession in regard to that.

Mr. WOODWORTH.—I can call his Honor's attention to it now. It is a very plain matter.

The COURT.—Proceed and put in your case.

Mr. WOODWORTH.—That will provides as follows: (Reads will.)

Mr. CLARK.—Have you read the entire will?

Mr. WOODWORTH.—I have read all of the will.

Mr. CLARK.—The return shows on its face that this sister's legacy was taxed.

Mr. WOODWORTH.—That was not; under the law it could not be taxed.

Mr. CLARK.—The return shows that the legacy was taxed in the sum of \$150, that particular legacy.

Mr. WOODWORTH.—That is true, if your Honor please.

Mr. CLARK.—Of course, the amount involved in this case is considerable, and I do not want to be put in the attitude of consenting to it; it would seem to me that your Honor could make a judgment that the plaintiff recover the tax imposed in so far as it was imposed upon the trust estate as shown by the exhibits. Then as a matter of calculation that can be determined.

Mr. WOODWORTH.—The amount of \$150; I am so anxious to dispose [98] of these matters I will not make any point on that, because of the small amount. But on some of the other cases I should like to be heard on the matter. I am perfectly willing to take a judgment for \$4062.90, less \$150. What is that amount? Is that satisfactory?

Mr. CLARK.—I do not want to be put in the position of consenting to a judgment of that sort. I will say in that case that it appears to be a case coming within the rule of Union Trust Company vs. Muentner.

The COURT.—Mr. Clark, I want to know the facts, whatever they are.

Mr. WOODWORTH.—You have conceded that in your brief.

Mr. CLARK.—Just a moment. I will look at it and see. I was in error, your Honor, in the brief in consenting to a judgment for the entire amount. Of course the \$150 deduction—

Mr. WOODWORTH.—I do not make any point on that.

The COURT.—Let judgment in the case go for the plaintiff, less the \$150.

Mr. CLARK.—Of course, it might be that some different position would be taken with respect to the question as to whether these legacies are or are not contingent, and so I would just like to be in this position with respect to these matters, simply state what the facts are and saying that within the rule the judgment would have to go in that way, so as not to be put in the attitude of having consented, because we may possibly get some instructions to take an appeal in these cases.

**[Testimony of John Rosenfeld, for Plaintiff.]**

In support of the Plaintiff's case No. 14,615, entitled Louis Rosenfeld et al. Plaintiffs, vs. A. E. Muentter, JOHN ROSENFELD, called for plaintiff, on being sworn, testified: That he was the son of John Rosenfeld, whose estate is involved in this case, and that the said John Rosenfeld died May 20th, 1902, and that [99] he and his brother Henry Rosenfeld were appointed executors of the will of deceased; that they remained such executors until July 13th, 1903, on which said date the property of the estate was distributed to them as trustees in accordance with the terms of the will of the deceased; that at no time did any of the heirs of the deceased or the

(Testimony of John Rosenfeld.)

legatees named in the will receive any of the *corpus* of the estate, and that under the terms of the will no one is to receive any of the *corpus* of the estate until 1913; that at the present time he and his brother were, as trustees, holding all of the property of the estate under the trust clause of the will, and that up to the present time he had received nothing from the estate nor had his brother; and that the only amounts received by any of the legatees or heirs were stipulated sums per month; that the amount received by each one of the heirs and legatees did not amount to \$10,000 to each one a year; that he recalled the payment of the legacy tax to the Government; that it was not until July, 1903, that any tax notice was given by the Government that it demanded any tax; that his attorneys informed him that the act had been repealed and there was no obligation to pay any tax; that he called at the Internal Revenue office, and that he was told that if the tax was not paid a penalty would be exacted, whereupon his attorneys advised that the tax be paid; that the Internal Revenue officers had advised him that if the tax was not paid, a suit would be begun and a penalty collected; that he protested against the payment of the tax after the demand was made and that under the advice of his attorneys when the tax was paid, he protested against the payment; that his protest was oral; that it was made on July 29th, 1903.

Cross-examination.

On his cross-examination the witness testified:  
[100] That the tax in this case was paid after the



decree of distribution in the estate had been made and after the trustees had received the property; that the amount of the tax was \$4062.90.

On the resumption of the trial of the case of Louis Rosenfeld et al. vs. Muentzer, No. 14,615, on the 7th day of December, 1910, further proceedings occurred as follows:

It was stated to the Court by the United States Attorney that the testimony did disclose that the tax had been paid by the trustees who were maintaining the action, and that apparently the tax had been imposed upon the property subject to provisions of a will similar to those involved in the case of Union Trust Company vs. Lynch, which had been decided by the Circuit Court of Appeals for the Ninth Circuit, and that consequently it would be incumbent upon the Court to grant judgment to the plaintiff in so far as the case at bar was governed by the case of the Union Trust Company vs. Lynch determined by the Circuit Court of Appeals, but that of the total amount sued for in the case, One Hundred and Fifty Dollars had been levied upon a legacy which had passed directly and that no recovery should be had for this amount. The Court stated that the judgment of the Court would be in favor of the plaintiff for the principal amount involved, less the sum of One Hundred and Fifty Dollars, together with lawful interest.

A copy of the will of the deceased was admitted in evidence, the same being attached to the claim for refunding of taxes next herein mentioned.

A copy of the legacy return and schedules returned

by the estate of the deceased Rosenfeld to the Collector of Internal Revenue was here received in evidence, the same being marked Plaintiff's Exhibit One and in case No. 14,615. [101]

In the case of O'Kelly vs. Muentner, No. 14,567, the following proceedings were had:

Mr. WOODWORTH.—The next case is that of Eleanor Campbell O'Kelly vs. August E. Muentner, No. 14,567. The amount sued for in this case is \$1341.09. The complaint is of the same general character, and the answer of the same nature.

The COURT.—What is the point raised?

Mr. WOODWORTH.—The point raised here is as to the legal capacity of the plaintiff to sue. That is, Mr. Clark wants to be satisfied that she still is at the present moment the executrix of the estate. Since the death of her husband this lady has remarried, and I introduce a certified copy of the marriage certificate, license certificate, also a certified copy of the letters testamentary brought down to date, that is, until the other day, until the first of December, 1910, and will offer these in evidence and ask that they be marked Exhibits 1 and 2, respectively, on behalf of the plaintiff; therefore, as far as the Court is concerned, she still remains the executrix and is competent to maintain this action. Now, this is a case similar to the Union Trust Company and the Rosenfeld case, if your Honor please. The protest in this case is admitted, is it not?

Mr. CLARK.—Yes, it is. Mr. Thomas testified to all of these specific instances, that they were paid under protest.

Mr. WOODWORTH.—I now offer the legacy return and the schedules annexed thereto in evidence, with a copy of the will also annexed. I ask that they be marked respectively Exhibits 3, 4 and 5, on behalf of the plaintiff.

This case, if your Honor please, is exactly similar to the Union Trust Company case, and I will read so much of the will as will be necessary for the purpose of showing that. [102]

(Reads from will.) There is a further proposition in this case, that there is a contest of this will which is still pending; but at any rate this case comes within the Union Trust Company case and the Rosenfeld case.

The COURT.—What is the amount involved there.

Mr. WOODWORTH.—\$1,341.09. She is still the executrix of the estate and there has been no decree of distribution at all.

Mr. CLARK.—You rely particularly on items three and four. (Reading.) The will is extremely long, your Honor, and I have gone through it hurriedly, and I think that is the provision creating the trust and subjecting the property to control of the mother, and it would seem that the will does come within the rule laid down in the case of Union Trust Company vs. Lynch, and that in this case judgment would go for the plaintiff. There has been no decree of final distribution in this case?

Mr. WOODWORTH.—Not up to that time.

The COURT.—Let judgment go for the plaintiff.

In this case the will of the deceased was admitted in evidence and marked Plaintiff's Exhibit 3 in case

No. 14,567. Said will is attached to the legacy return and schedule next mentioned, being separately marked.

Said legacy return and schedules, so received in evidence are marked Plaintiff's Exhibits 4 and 5 in case No. 14,567.

In the case of Friederich vs. Muentner, No. 14,796, the following proceedings were had: [103]

Mr. WOODWORTH.—The next case is No. 14,796, a case brought by Alfred Friederich, Beatrice Jefferis, nee Friederich, Marguerite Roberts, nee Friederich and Mizpah Hoelscher, nee Friederich, against August E. Muentner, Collector of Internal Revenue. This is a case that has not been tried, and involves exactly the same questions. It is a simple case, and I wish to get rid of it. This is a suit brought by these four parties who were the heirs at law of Gustav A. Friederich, who died on January 19, 1902. In that case, Mr. Clark filed the general answer. I suppose, Mr. Clark, it will be admitted, for the purpose of this case, that the tax was paid as alleged?

Mr. CLARK.—Yes, assessed as alleged.

Mr. WOODWORTH.—And a claim presented for its refund, and the money is still due, owing and unpaid.

Mr. CLARK.—The money is unpaid.

Mr. WOODWORTH.—I now offer in evidence the original legacy returns of the Internal Revenue Office and the schedules annexed thereto, to which is also annexed a copy of the will of Gustav A. Friederich, and some other papers, such as Duplicate

Statements of Facts Presented and Allowed. Will you mark those now?

(The papers are marked Exhibits 1, 2 and 3 on behalf of plaintiff.)

We have a witness here, if your Honor please, Mr. Hoelscher.

The COURT.—What do you want to prove by him?

Mr. WOODWORTH.—Simply to show that under the terms of this will the legacy shares could not be paid over owing to the trust clauses, until the youngest sister arrived at age.

The COURT.—That depends upon the terms of the will. That is not a matter of oral proof. [104]

Mr. WOODWORTH.—I know, but there is a further provision. During the dependency of this trust clause a certain income was to be paid to these people, and I desire to show, unless you admit it, Mr. Clark, that the income does not amount to \$10,000. The youngest child did not reach the age of twenty-one until the twenty-second day of August, 1904, which was, of course, subsequent to the repeal of the law, and was not vested at the time of the repeal of the law. There has been a decree of distribution, Mr. Clark, dated August 17, 1904.

Mr. CLARK.—During the progress of the trust?

Mr. WOODWORTH.—From the trustees to the heirs who are now suing, less the amount of the legacy there.

Mr. CLARK.—I would like to have the witness sworn.

**[Testimony of William F. Hoelscher, for Plaintiff.]**

WILLIAM F. HOELSCHER, being sworn, testified for the plaintiff, as follows:

That he was the husband of the oldest daughter of Gustav Friederich, deceased; that he knew there was no distribution in the estate of the deceased before 1904 of any kind. The legatees and heirs of the deceased did not nor did any of them receive anything until the youngest child became twenty-one years of age and that was on August 2d, 1904; fifteen days later the estate was distributed less the amount of the income tax; the executors were called upon to pay the income tax. The action is prosecuted by the heirs themselves in this case; the executors were discharged; the trustees have been discharged from their trust.

(Mr. Woodworth here stated that he had never been able to procure a copy of the decree of distribution in the estate. Mr. Woodworth further stated that the legatees were entitled to the claim against the Government because the same had been paid [105] out of their shares. They got their legacies less the amount of the tax and they are the parties that have been injured.)

The COURT.—At the time that it was paid it was a part of the estate. Now, then, if this is recoverable it is recoverable by the executors.

Mr. WOODWORTH.—He is no longer in existence. The estate has been finally distributed to those who were entitled to it, and they have received their legacy shares less the amount of the tax.



(Testimony of William F. Hoelscher.)

The COURT.—The witness says that the decree of distribution which has been destroyed in the fire did not distribute this claim to the heirs, that that was retained in the hands of the executors.

The WITNESS.—It was deducted, I understand. It was deducted from each share.

Mr. CLARK.—Do you know when it was that the executors were discharged?

A. They must have been discharged about August 2d, 1904.

Q. August 2d, 1904?

A. Yes, that was the time when the youngest child became twenty-one years of age.

Q. But the legacy tax was paid before that time?

A. The legacy tax was paid on or about that time.

Q. It came out of their share, did it? A. Yes.

Q. Was it distributed to the trustees or to the legatees?

A. At the time of the distribution, do you mean?

Q. At the time of the discharge of the executors, I mean.

A. Well, it was distributed to the legatees, each one received his portion less the income tax.

Mr. CLARK.—Can't you give the date, Mr. Woodworth, on which the distribution occurred in this estate?

Mr. WOODWORTH.—August 15th, 1904. [106]

Mr. CLARK.—Q. There never was any appointment of trustees in this case, was there?

A. No appointment. They were the trustees, those two parties, to proceed under the will.

(Testimony of William F. Hoelscher.)

The COURT.—Q. They were the executors and trustees both? A. Yes.

Mr. CLARK.—Do you know, Mr. Woodworth, whether the decree of distribution in this case did distribute either by general terms or specific terms the claim in suit to these present beneficiaries who are maintaining this action in their individual capacity?

Mr. WOODWORTH.—All I know is there was a final decree of distribution; the executor was discharged from his trust. This money was paid out of their shares, and certainly they have been injured by it.

The COURT.—It is not a question of injury. It is a question of whether they hold the legal title to sue for this amount.

Mr. WOODWORTH.—I think they do, under the circumstances. The statute provides it must come out of the shares, and it was taken out of their shares.

Mr. CLARK.—Do you think you could get a copy of that decree of final distribution?

A. I am afraid the copies were burned up in the Hall of Records.

Q. Who was your attorney at that time?

A. Mr. Friedenrich.

Mr. WOODWORTH.—We will have Mr. Friedenrich here in the morning so as to satisfy you, Mr. Clark.

[**Testimony of David Friedenrich, for Plaintiff.**]

DAVID FRIEDENRICH, called for the plaintiff, sworn, testified:

Mr. WOODWORTH.—Q. Mr. Friedenrich, you are an attorney and practicing lawyer, and have been for many years? A. Yes, sir. [107]

Q. Were you the attorney for the executors in the case of Gustav A. Friedrich? A. Yes, sir.

Q. Could you tell the Court—I will ask you, first, have you any of the papers? A. No, sir.

Q. What became of the papers that were filed, the probate papers?

A. They were all destroyed by the fire, but since you spoke to me about the matter, last evening, I looked over my private papers and I found one paper which somewhat refreshed my memory as to certain facts.

Q. You did not find a copy of the final decree of distribution did you? A. No, sir.

Q. Will you kindly state to the Court whether in the decree of final distribution which was filed in this estate there was any clause transferring all unknown and undiscovered property, an *omnibus* clause?

A. Well, I have no distinct recollection of the terms of this decree, but I always took a special care in every decree of final distribution to have the *omnibus* clause inserted.

The COURT.—Q. But you have no distinct recollection of this?

A. No distinct recollection of this decree, but in conformity with my universal rule, I have not any

(Testimony of David Friedenrich.)

doubt that that *omnibus* clause was inserted.

Q. It was an estate of considerable importance?

A. Yes, there was a good deal of money involved in the estate.

Mr. CLARK.—Do you remember distinctly in this case as to when the tax in question was paid to the Collector of Internal Revenue?     A. No, sir.

Q. You do not remember that?     A. No, sir.

Q. Do you remember whether it was paid before or after distribution?

A. It was paid after distribution. I think it was [108] paid by the trustees, because I remember being consulted by them.

Q. Do you remember quite distinctly being consulted by the trustees with respect to this payment of the tax?     A. Yes, sir.

Q. It concerned the payment and not the mere collection of the tax that had already been paid—they did consult you, did they?

A. It referred to the payment of the tax.

Q. The actual payment?

A. Yes, sir. It is my recollection; in fact one paper that I have in my possession shows that the decree was entered January 13, 1903, and it was subsequent to that time that the trustees to whom the property had been distributed made distribution to the heirs, and it was during the time that—it was after the decree and before the distribution to the heirs that the tax was paid.

Mr. WOODWORTH.—And this tax came out of the various legacies which were paid?     A. Yes, sir.

(Testimony of David Friedenrich.)

MR. WOODWORTH.—That is all. I have nothing further, Mr. Clark.

MR. CLARK.—I think that covers the facts.

MR. WOODWORTH.—I will ask for judgment in that case, \$432.88 with interest and costs.

THE COURT.—What was the question we were discussing yesterday?

MR. CLARK.—As to the actual payment of the tax after the decree of distribution, the question being as to whether if paid before, the claim against the Government had been covered by the decree of distribution.

THE COURT.—Let judgment go for the plaintiff.  
[109]

Plaintiff offered in evidence the will of the deceased which was marked Exhibit 1 in case No. 14,796, the same being a part of Exhibits 3 and 4 in the same case.

The plaintiff offered in evidence the legacy return and schedule made to the Collector of Internal Revenue, the same being admitted and marked Exhibits 3 and 4, respectively, in case No. 14,796.

In the case of George D. Bliss, Jr., vs. August E. Muentner, No. 14,730, the following proceedings were had:

MR. WOODWORTH.—The next case, if your Honor please, is the case of George D. Bliss, Jr., executor of the Last Will and Testament of George D. Bliss, deceased, against August E. Muentner, Collector of the Internal Revenue of the United States, etc. Suit was brought in this case to recover the sum

of \$1,497.94. The facts admitted are that the deceased died as stated in the complaint, the assessment and paying of the tax, the filing of the claim, the fact that the money has not been repaid. The will in this case is quite a complicated affair. The will provides, in the first clause, for the payment of funeral expenses and all lawful debts; the second clause declares that no widow, child or children of my deceased son, John O. Bliss, shall have or receive anything whatever from my estate, and specified those who could inherit. The third clause states that all of his property is sole property and no part thereof is community property. The fourth clause gives and devises to his wife, Martha S. Bliss, for and during her natural life, all of the following described land, describing the land:

“The remainder after said life estate in said land, I give and devise to my three daughters, Helen M. Sullivan, Annie Bliss [110] Rucker, and Harriet L. Hermann, share and share alike, provided, however, that if any of my said daughters shall die before the death of my said wife, Martha S. Bliss, leaving issue living at the time of the death of *living at the time of the death of* such daughter, then, and in that event, the share hereby devised to such daughter shall pass to and vest in the said surviving issue of such daughter, by right of representation. I also give, devise and bequeath to my said wife, Martha S. Bliss, for and during her natural life, ten shares of the stock in the Farmers’ Ditch Company, a corporation, which has an irrigating ditch running said Deep Creek Field. The remainder after said life estate in



said ten shares of stock, I give, devise and bequeath to my three daughters, Helen M. Sullivan, Annie Bliss Rucker, and Harriet L. Hermann, share and share alike.”

Now, the Government has taxed this life estate to some extent; of course it has not taxed the real estate, because it could not do so, as the tax simply pertains to personal property. It has taxed these ten shares, which, of course, could not vest until after her death, and therefore were of a contingent character; and that is the first point that we make. Is there any dispute about that at all?

Mr. CLARK.—I am just looking over this.

Mr. WOODWORTH.—At this time I will introduce the legacy return with the schedules annexed; also a statement of the lawful debts and expenses of administration, and attached thereto is Exhibit “A,” which shows the property specifically willed to each beneficiary and the debts and expenses chargeable properly against the same.

The COURT.—What does that show? [111]

Mr. WOODWORTH.—It shows exactly what the Government did tax.

The COURT.—How much?

Mr. WOODWORTH.—The Government did tax this.

The COURT.—I mean how much are those amounts, how much went to each one.

Mr. WOODWORTH.—Of this stock?

The COURT.—Of the entire property that passed.

Mr. WOODWORTH.—The appraised value of the personal property was \$194,190.70; the total amount

of lawful debts and expenses amounted to \$33,579.73, leaving a clear value of personal property on the 4th of December, 1903, of \$160,590.90. Now, the portion to the wife was, of course, exempt. The amounts paid to the various children is as follows: Helen M. Sullivan, daughter of Judge Sullivan—the wife of former Judge Sullivan, \$14,872.26; the tax amounted to \$111.54. To Annie Bliss Rucker, another daughter, the same amount, and the same amount of tax. To George D. Bliss, executor of the estate, \$51,702.88½; the tax amounting to \$581.66. To Richard O. Bliss, a minor, and whose property was left in trust, and taxed, the sum of \$51,702.88½, the tax amounting to \$581.66; to Harriet L. Hermann, whose property was left in trust but taxed nevertheless, \$14,872.26; the tax amounted to \$111.54.

Now, as I say, the first property which was taxed by the government officials, and which should not have been, according to our contention, was the ten shares of stock, which, according to the terms of the will were given, devised and bequeathed to the wife during the term of her natural life, thereafter to be turned over to the three daughters. As to those ten shares we contend that there should be a return as to the tax imposed upon those ten shares.

The COURT.—How much was that? [112]

Mr. WOODWORTH.—It has taken a good deal of figuring here. The life interest in ten shares of the Farmers' Ditch Company, appraised at \$1,000 a share as per the Government actuary tables—they had no definite way of ascertaining this except by resorting to the Government actuary tables.

The COURT.—Of course, they did not tax the property.

Mr. WOODWORTH.—No, they did not. I was just getting my cue from that, there are so many provisions here. The reversionary interest in ten shares of the Farmers' Ditch Company appraised at \$1,000 as per actuary tables; the amount was \$142.86.

The COURT.—Imposed on that interest?

Mr. WOODWORTH.—Yes, on the interest of Helen M. Sullivan, on the interest of Annie Bliss Rucker, and the interest of Harriet L. Hermann; that is all, the three daughters. The tax, as I have figured it out—the tax upon that would be at the rate of seventy-five cents a hundred, which, according to my computation, would amount to about \$2.14 with each one of them, making the sum of six dollars and something.

The COURT.—How could it be \$2.14 if it was seventy-five cents a hundred, and the amount was \$142?

Mr. WOODWORTH.—I may be in error with my figures. At any rate it was a very small tax, whatever it was. That is a very immaterial matter, but still it is an item in this case showing the manner in which these officials taxed the life estate.

Going on from that there is a provision devising to the wife the dwelling-house, with the furniture and equipment, and various provisions which are not necessary to be considered here, not being involved.

The next provision is, "I give and bequeath to my said wife, Martha S. Bliss, and my said five children all of the money on hand at the time of my death

after deducting therefrom [113] sufficient to pay all debts due by me at the time of my death, including the expenses of my last illness and funeral expenses, as follows: To my said wife one-third thereof, and to my said children the other two-thirds thereof, share and share alike.”

The COURT.—How did it come that the boys got so much more than the girls did?

Mr. WOODWORTH.—That is something I do not know, if your Honor please. You have reference to the boys' share?

The COURT.—I notice in reading these amounts the boys were getting the same, fifty-one thousand dollars and odd, and the daughters were getting fourteen thousand dollars and odd. Perhaps the daughters had received more before.

Mr. WOODWORTH. — Very probably, your Honor. This is a very long will and a complicated affair. The next provision relates to the devises which he has made in the fourth paragraph of his will to his wife, in which he states that he has given her a fair proportion of the estate, and that the acceptance by her shall operate as a waiver of any further claim. In addition to that he makes a family allowance of not exceeding \$250 a month.

The fifth clause is: “I give, devise and bequeath to my daughter, Helen H. Sullivan, an undivided one-third and to my daughter Annie Bliss Rucker, an undivided one-third of all of that certain ranch now owned by me, known as the L. C. ranch, except two thousand acres thereof, known as and called the Deep Creek Field, hereinabove described and devised for

life to my wife"—just a devise of real estate, and as I read the statement here has been taxed, which of course is erroneous and illegal.

The COURT.—Where do you find that that has been taxed?

Mr. WOODWORTH.—No, I am in error about that. It is the personal property upon those ranches. I am in error about that.

The next provision devises to his said daughter, Helen [114] M. Sullivan, an undivided one-third, and to his daughter Annie Bliss Rucker, an undivided one-third, of all the water rights of whatever kind and description.

The COURT.—That is real estate.

Mr. CLARK.—There were some share in water companies there.

Mr. WOODWORTH.—Yes. The water rights are not taxed. Then he devises certain shares in said water right, except the ten shares of stock which he gave in the Farmers' Ditch Company, which he devised to his wife for life, which was exempt, of course. He also bequeathed to Helen M. Sullivan and Annie Bliss Rucker an undivided one-third of all the cattle and other live-stock and other personal property on said above-described land, which was taxed by the Government, and as to which of course, with reference to Helen M. Sullivan, and Annie Bliss Rucker, we make no objection at this time.

“The remaining undivided one-third”—here comes the clause, the fifth clause of this—one of the trust features of this will—“of all the property, real and personal, described in this fifth paragraph of my said



last will and testament, left after revising and bequeathing two undivided thirds thereof to my said daughters, Helen M. Sullivan and Annie Bliss Rucker, I devise and bequeath to my son in law, Jeremiah F. Sullivan, in trust, upon the following terms, viz.:

1. To hold the same in trust for my daughter, Harriet L. Herrmann, so long as she continues to be the wife of said George Herrmann.

2. To manage, control and operate the same during the existence of this trust.

3. To pay over to my said daughter annually, the rents, issues, profits and income thereof, after deducting the expenses [115] of managing, controlling and operating the same.

Said trust shall terminate whenever my said daughter ceases to be the wife of said George Herrmann. If my said daughter shall cease to be the wife of said George Herrmann before her death, then, and in that event, the property embraced in said trust, shall vest in fee simple absolute in my said daughter, Harriett L. Herrmann. In case my said daughter dies while she is the wife of said George Herrmann, then, and in that event, the property embraced in said trust shall vest in fee simple in such children of my said daughter as shall survive her, share and share alike.”

Mr. CLARK.—Will you permit a suggestion?

Mr. WOODWORTH.—Yes.

Mr. CLARK.—If the Court please, this will is twelve pages long. Part of it vests absolutely personal property, a portion of the legacies mentioned in



the will; there is no doubt about it. Part of it vests property in trust.—

Mr. WOODWORTH.—I desire to make the point, so as to take it up on appeal, that none of these legacies vested in absolute possession and enjoyment at the time of the repeal of the law.

Mr. CLARK.—What I was going to suggest was this, your Honor: there are ten pages of this will, and about four or five legacies, and in some instances there are absolute bequests of personal property; that is, bequests directly. It is an impossibility, in making a statement this way to the Court orally, to make a mathematical estimate or arithmetical estimate, which will determine what portion of this tax was in fact levied upon contingent property, and what was levied upon vested property. I was simply going to suggest that this particular case be postponed until the conclusion of some of the others,— [116]

Mr. WOODWORTH.—(Intp.) I would suggest, as I have proceeded thus far, I might go through this matter and then Mr. Clark can take these points down and go over them.

Mr. CLARK.—I cannot say which ones they are at this time.

Mr. WOODWORTH.—I am calling your attention to the fact that the interest of Harriett L. Hermann was left in trust, was not vested; that this interest of Harriet L. Hermann was taxed by the Government in the sum of \$111.54. Now, there ought not to be any difficulty about that computation. It is here. I will also call your attention to the ten shares, a small amount,—there is very little compu-

tation there, but every little bit helps.

Mr. CLARK.—What clause do you say in the will makes all of the property which is left to this particular legacy in trust?

Mr. WOODWORTH.—It is the fifth paragraph, which I have just read. She is not to get this money during her life.

The COURT.—She gets the income.

Mr. WOODWORTH.—The income did not amount to \$10,000.

The COURT.—She gets the income, but she does not get the property.

Mr. WOODWORTH.—Yes. Will you take my statement that the income did not exceed \$10,000; it is the fact. Mr. Bliss is up on one of these ranches, and you know I would not make that statement unless it were true.

Now, the sixth provision, Mr. Clark, relates to a bequest absolutely to George D. Bliss, of said portions of real estate.

Mr. CLARK.—Before passing to that, Mr. Woodworth, would you be willing, in going through this matter, to take up each one of these legacies and *estate* to the Court which ones received vested interest, and which ones received contingent legacies? [117] In the first place, take Helen M. Sullivan, the wife of Jeremiah F. Sullivan, is she not left in the first place a remainder in the shares of stock absolutely, the ten shares of stock of the Farmers Ditch Company?

Mr. WOODWORTH.—Yes.

Mr. CLARK.—That is, she is left that absolutely.

Mr. WOODWORTH.—Of course, the remainder does not take effect during the life time of the mother, and is held in trust.

The COURT.—Yes, it is a vested interest, but its enjoyment is postponed.

Mr. WOODWORTH.—If anything is postponed in enjoyment under the law, no tax could possibly be imposed upon it.

The COURT.—I am not talking about that. You have made a statement that was to my mind erroneous as to the legal effect, as to the vesting of the title.

Mr. WOODWORTH.—I concede that the title vests immediately, but the enjoyment perhaps is postponed until after the death of the mother, which is an uncertain period, and it has been held that it is not subject to tax, an interest of that character.

Mr. CLARK.—I think not. What is the next piece of property?

Mr. WOODWORTH.—The next piece of personalty is one-third of the cash on hand. Of course, that vested at the time.

Mr. CLARK.—You are referring to page four of the will?

Mr. WOODWORTH.—I am referring to page four of the will. You are asking me to take up each one. What else do you desire to know, Mr. Clark?

Mr. CLARK.—That you concede that the money so left her was vested.

Mr. WOODWORTH.—The title was passed. I do not concede it was vested into possession or enjoyment until subsequent to the [118] repeal of the

law, when a final decree of distribution was entered, according to that decision I cited yesterday.

Mr. CLARK.—It might be well to see what is in the will in regard to that. I was going to suggest that the will does not in specific language leave to this daughter one-third of such money on hand. It says, I give, devise and bequeath to my said wife, Martha S. Bliss, and my said five children all of the money on hand at the time of my death, after deducting therefrom sufficient to pay all debts due by me at the time of my death, including the expenses of my last illness and funeral expenses, as follows: To my said wife one-third thereof, and to my said five children the other two-thirds thereof, share and share alike, and if all or any of them be not living at the time of my death, then to the heirs of such of them as are deceased, by right of representation.”

Now, I take it, under your Honor's ruling, that so far as cash on hand is concerned, this particular legatee actually received a vested interest in that cash.

Mr. WOODWORTH.—There was another case to which Mr. Clark called my attention yesterday, with reference to the vesting of this estate, a case in accord with that of Farrell versus the United States, holding that until the time for distribution arrives all of these claims are contingent, within the meaning of the taxing law; that was the case of United States versus Marine Trust Company, where the Court said, until the administration is in such a condition, until the estate is ready to pass to the heirs, no assessment can take place; until the administration is in such

condition that the heir is in a position to take the thing to be taxed, the tax cannot be levied.

The COURT.—That doctrine does not appeal to me in the slightest. [119]

Mr. WOODWORTH.—Your Honor holds that is subject to tax?

The COURT.—Yes.

Mr. WOODWORTH.—I will take an exception.

Mr. CLARK.—Now, taking the personal property described on page six of the will.

Mr. WOODWORTH.—The next one is Annie Bliss Rucker.

Mr. CLARK.—I suggest that we go through the Sullivan bequest.

Mr. WOODWORTH.—All the bequests to Helen M. Sullivan are of the same character; there is no trust feature about it. His Honor has ruled that my point is not tenable.

Mr. CLARK.—The next personality is the same.

Mr. WOODWORTH.—I make the same point, there is no use going over that; there is no trust feature about that.

The COURT.—I suppose the same is true as to Mrs. Rucker.

Mr. WOODWORTH.—The same is true as to Mrs. Rucker. The other persons as to whom there is a question with reference to the trust feature of this estate are Richard O. Bliss, who was a minor at that time, and Harriet L. Herrmann, because of her marriage to Mr. Herrmann.

Mr. CLARK.—What particular provision covers that?



Mr. WOODWORTH.—I just read the provision with reference to Mrs. Herrmann.

The COURT.—It is paragraph five.

Mr. CLARK.—You concede in regard to the cases of Jeremiah Sullivan and Annie Bliss Rucker, the clauses are alike in the will.

The COURT.—Jeremiah Sullivan is not a legatee at all.

Mr. WOODWORTH.—He means as to Mrs. Sullivan.

Mr. CLARK.—Then as to Harriet L. Herrmann, you contend there was a trust clause there. As to George D. Bliss, how about that? [120]

Mr. WOODWORTH.—I do not think there is any question of trust about it; I am not quite sure; but I do not think so.

Mr. CLARK.—Do not you concede that the money referred to on page four of the will was left to all of the children absolutely?

Mr. WOODWORTH.—Yes, I think so.

The COURT.—I think you had better take this case and figure out where you are. We cannot consume time here in figuring it out. I have no doubt that you gentlemen will be able to agree upon such a judgment as is to be entered by me. Let the further consideration of this case be postponed, or rather, let it be submitted with the understanding that you will figure it out for yourselves, because it takes up too much time here.

Mr. WOODWORTH.—In the case of Bliss, there is no dispute with reference to the trust estate left to Mrs. Hermann, nor is there any dispute as to the



amount, which is \$111.54. With reference to the disposition of the property left to Richard O. Bliss, Jr., upon his arriving at the age of twenty-five, I ascertained this morning upon wiring down to Mr. Bliss, he has just reached the age of twenty-five years six or seven months previous to the death of his father, so that that would dispose of the case, so that the only thing left in this case is \$115.14, in addition to the sum of \$2.14 for the tax upon those ten shares of stock in the Ditch Company.

Mr. CLARK.—You say he has reached the age of twenty-five?

Mr. WOODWORTH.—Yes, I did. There was no further contest in that case except as to the share amounting to \$2.14.

The COURT.—What is the further amount?

Mr. WOODWORTH.—\$2.14 and \$111.54.

The COURT.—Very well, the plaintiff may take judgment for the sum of those amounts. [121]

Plaintiff offered in evidence a copy of the will of the deceased George D. Bliss, the same being attached to the schedule and return next herein mentioned, in case No. 14,730.

The plaintiff offered in evidence the decree of distribution in the estate of George D. Bliss the same being marked Exhibit one in case No. 14,730.

The Court admitted in evidence the legacy return and schedules made by the estate to the Collector of Internal Revenue, said return and schedule being marked Plaintiff's Exhibit I in case No. 14,730.

**[Testimony of B. M. Thomas, for Plaintiff.]**

B. M. THOMAS on being called as a witness for plaintiff, was sworn and testified: That all the taxes involved in all of the foregoing cases were paid under protest.

Before the final submission of the foregoing causes and before the Court rendered any judgment therein or made any Findings of Fact or Conclusions of Law, the defendant made in open court a motion for certain findings. Said motion was also incorporated in a writing made and filed with the Court. Said motion was made during the progress of the trial of said cases and at the conclusion of the taking of all of the testimony therein. The motion was the same in each case and in substance was as follows:

1. That the Court, upon the evidence introduced, oral and documentary, find that the legacies or the distributive shares of property upon the passing of which the amount of taxes in question in this case was levied, or assessed, vested in immediate possession or enjoyment upon the death of the deceased by virtue of the death of the deceased and the will of the deceased [122] whose estate is referred to in the complaint;

2. That such legacies or distributive shares of property upon which the Collector of Internal Revenue levied or assessed the amount of taxes in question were not in any respect contingent legacies or shares;

3. That neither the possession nor the enjoyment of any of the legacies or distributive shares of prop-

erty on account of which the amount of taxes in question was levied or assessed, was contingent upon any matter whatsoever;

4. That each of the legacies and distributive shares mentioned in the complaint on account of the passing of which the amount of taxes in question was levied or assessed and paid vested in immediate possession and enjoyment;

5. That each legacy or interest taxed was capable of a clear valuation;

6. That the said clear valuations were correctly ascertained in levying or assessing of the tax;

7. That in no case referred to in the complaint was any tax levied or assessed on any legacy or interest in property except upon the clear value thereof so correctly ascertained, and that the amount of taxes collected was computed and determined in accordance with such clear valuation;

8. That the relationships sustained to the deceased by the persons named in the complaint to whom the legacies or interests therein mentioned passed were ascertained by the Collector and properly considered in computing the tax;

9. That the amount of taxes mentioned in the complaint was levied and assessed only in accordance with the clear value of the property on which the same was computed and in accordance with the relationship of the legatee, the passing of whose legacy interest was in fact taxed. [123]

The Court declined to make any one of the foregoing Findings. The defendant excepted to the refusal of the Court to make such Findings and

excepted to its refusal in the case of each of said requested Findings.

The United States Attorney, in stating that judgment should go for the plaintiff in certain cases, did not consent to the judgments referred to, but merely indicated that in view of the previous ruling of the Court in the case of Union Trust Company vs. Lynch, affirmed by the Circuit Court of Appeals, it would not be contended that this Court should not enter the judgments mentioned.

In the case of the Union Trust Company of San Francisco vs. Muentner, etc., hereinbefore mentioned, after making its Findings of Fact and Conclusions of Law, the Court rendered judgment in favor of the plaintiff on January 18th, 1911, to the effect that the plaintiff should have and recover from the defendant as Collector of Internal Revenue the sum of \$1661, being the aggregate amount of taxes assessed, imposed and paid as aforesaid, with the interest on said sum at the rate of seven per cent per annum from May 27th, 1903, the same being the date when said taxes were paid to the then Collector of Internal Revenue.

That defendant complaining of said judgment presents this Bill of Exceptions.

In the case of Louis Rosenfeld and Henry Rosenfeld as trustees vs. August E. Muentner, etc., hereinbefore mentioned, after making its Findings of Fact and Conclusions of Law, the Court rendered judgment in favor of the plaintiffs on January 18th, 1911, to the effect that the plaintiffs should have and recover [124] from the defendant, as Collector of

Internal Revenue, the sum of \$3,912.90, being the aggregate amount of taxes assessed, imposed and paid as aforesaid upon the share of the estate of John Rosenfeld, deceased, bequeathed in trust to Louis Rosenfeld and Henry Rosenfeld for and on behalf of the children and beneficiaries above named, to wit: Henrietta Romer, Sarah Eppstein, Lucy Isabella Weill, Max S. Rosenfeld, Louis Rosenfeld and Henry Rosenfeld, together with interest on said sum at the rate of seven per cent per annum from July 29th, 1903, the same being the date when said taxes were paid to the then Collector of Internal Revenue.

That defendant complaining of said judgment presents this Bill of Exceptions.

In the case of Eleanor Campbell O'Kelly, etc., vs. August E. Muentner, etc., hereinbefore mentioned, after making its Findings of Fact and Conclusions of Law, the Court rendered judgment in favor of the plaintiff on January 18th, 1911, to the effect that the plaintiff should have and recover from the defendant as Collector of Internal Revenue, the sum of \$1,341.09, being the aggregate amount of taxes, assessed, imposed and paid as aforesaid upon the shares of the estate of Allen G. Campbell, deceased, bequeathed in trust to plaintiff, Eleanor Campbell O'Kelly, for and on behalf of the children and beneficiaries above named, to wit: Allen George Campbell, Byrum Cullen Campbell and Caroline Neill Campbell, together with the interest on said sum at the rate of seven per cent per annum from May 12th, 1903, the same being the date when said taxes were paid to the then Collector of Internal Revenue.



The defendant complaining of said judgment presents this Bill of Exceptions. [125]

In the case of Alfred Friedrich et al. vs. August E. Muentner, etc., hereinbefore mentioned, after making its Findings of Fact and Conclusions of Law, the Court rendered judgment in favor of the plaintiffs on January 18th, 1911, to the effect that each of the plaintiffs should have and recover from the defendant as Collector of Internal Revenue, the sum of \$108.22, being in the aggregate the sum of \$432.88, taxes so assessed, imposed and paid as aforesaid, with interest on said sums of \$108.22, to each of said plaintiffs at the rate of seven per cent per annum from July 14th, 1904, the same being the date when said taxes were paid to the then Collector of Internal Revenue.

That defendant complaining of said judgment presents this Bill of Exceptions.

In the case of George D. Bliss, Jr., Executor, etc., vs. August E. Muentner, etc., hereinbefore mentioned, after making its Findings of Fact and Conclusions of Law, the Court rendered judgment in favor of the plaintiff on January 18th, 1911, to the effect that the plaintiff should have and recover from the defendant, as Collector of Internal Revenue, the sum of \$111.54 and \$2.14, being the amount of taxes assessed, imposed and paid as aforesaid upon the legacy in favor of Harriet L. Herrmann and the reversionary interests in said ten shares of the stock of the Farmers Ditch Company, in favor of Annie Bliss Rucker, Helen M. Sullivan and Harriet L. Herrmann, with interest on said sums at the rate of seven per cent per



annum from February 3d, 1904, the same being the date when said taxes were paid to the then Collector of Internal Revenue.

That defendant complaining of said judgment presents this Bill of Exceptions. [126]

**Order Approving and Settling Consolidated Bill of Exceptions.**

The foregoing consolidated Bill of Exceptions, duly proposed and agreed upon by the counsel of the respective parties, is correct in all respects, and is hereby approved, allowed and settled and made a part of the record herein.

Dated July 8th, 1911.

WM. C. VAN FLEET,  
Judge. [127]

**Stipulation Relative to Consolidated Bill of Exceptions.**

It is hereby stipulated and agreed by and between the attorneys for the respective parties to the above and foregoing entitled actions, that the foregoing consolidated Bill of Exceptions has been presented in time, and that it be approved, allowed and settled by the Judge of the above-entitled court, and that the same shall be made a part of the record in said actions and be a consolidated Bill of Exceptions therein.

Dated July 8th, 1911.

MARSHALL B. WOODWORTH,  
Attorney for Plaintiffs.

ROBT. T. DEVLIN,  
United States Attorney,  
Attorney for Defendant. [128]

*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,615.

LOUIS ROSENFELD et al.

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,567.

ELEANOR CAMPBELL O'KELLY

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,796.

ALFRED FRIEDRICH et al.

vs.

AUGUST E. MUENTER, as Collector, etc.

No. 14,730.

GEORGE D. BLISS, Jr.,

vs.

AUGUST E. MUENTER, as Collector, etc.

**Stipulation Relative to Exhibits in the Above-entitled Causes.**

It is hereby stipulated and agreed by and between the attorneys for the respective parties to the above

and foregoing actions that all exhibits introduced upon the trial of the above-entitled actions and now in the custody of the clerk of this court shall be deemed to be included as a part of the foregoing bill of exceptions with the same effect in all respects as [129] if incorporated in said Bill of Exceptions.

In the event the said exhibits are not so numbered as to identify the same, they shall be marked by the Court upon its certifications of this Bill of Exceptions so as to identify the same.

San Francisco, Cal. Dated July 3, 1911.

ROBT. T. DEVLIN,

Attorney for Defendant.

MARSHALL B. WOODWORTH,

Attorney for Plaintiffs.

[Endorsed]: Filed July 8th, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy.  
[130]

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*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO,

Plaintiff,

vs.

AUGUST E. MUENTER, as Collector of the Internal Revenue of the United States for the 1st Collection District of California,

Defendant.

**Petition for Writ of Error.**

August E. Muentner, the defendant in the above-entitled action, feeling himself aggrieved by the judgment of the above-entitled court entered upon the 18th day of January, 1911, whereby it was adjudged that the plaintiff have and recover from the defendant the sum of \$1661.00, with interest on the same, now comes by Robert T. Devlin, his attorney, and petitions said Court for an order allowing him, the said defendant, to prosecute a writ of error to the United States Circuit Court of Appeals in and for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; and that all further proceedings in this court be suspended, stayed and superseded until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Judicial Circuit.

And your petitioner will ever pray, etc.

Dated July 7th, 1911.

AUGUST E. MUENTER,

Collector as Aforesaid.

By ROBT. T. DEVLIN,

His Attorney.

[Endorsed]: Filed Jul. 10, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO,

Plaintiff,

vs.

AUGUST E. MUENTER, as Collector of the Internal Revenue of the United States for the 1st Collection District of California,

Defendant.

**Assignment of Errors.**

Now comes August E. Muentner, as Collector of the Internal Revenue of the United States for the 1st Collection District of California, the defendant in the above-entitled action, by Robt. T. Devlin, Esq., his attorney, and specifies the following as the errors upon which he will rely and which he will urge upon his writ of error in the above-entitled action, to wit:

I.

The Court erred in refusing to make defendant's proposed finding number 1, which is in the words and figures following, to wit:

"1. That the Court upon the evidence introduced, oral and documentary, find that the legacies or the distributive shares of property upon the passing of which the amount of taxes in question in this case was levied or assessed, vested in immediate possession or enjoyment upon the death of the deceased by virtue of the death of the deceased and the will of the

deceased whose estate is referred to in the complaint.”

## II.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 1. [132]

## III.

The Court erred in refusing to make defendant's proposed finding number 2, which is in the words and figures following, to wit:

“2. That such legacies or distributive shares of property upon which the Collector of Internal Revenue levied or assessed the amount of taxes in question were not in any respect contingent legacies or shares.”

## IV.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 2.

## V.

The Court erred in refusing to make defendant's proposed finding number 3, which is in the words and figures following, to wit:

“3. That neither the possession nor the enjoyment of any of the legacies or distributive shares of property on account of which the amount of taxes in question was levied or assessed was contingent upon any matter whatsoever.”

## VI.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 3.



VII.

The Court *Court* erred in refusing to make defendant's proposed finding number 4, which is in the words and figures following, to wit:

"4. That each of the legacies and distributive shares mentioned in the complaint on account of the passing of which the amount of taxes in question was levied or assessed and paid vested in immediate possession and enjoyment."

VIII.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 4. [133]

IX.

The Court erred in refusing to make defendant's proposed finding number 5, which is in the words and figures following, to wit:

"5. That each legacy or interest taxed was capable of a clear valuation."

X.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 5.

XI.

The Court erred in refusing to make defendant's proposed finding number 6, which is in the words and figures following, to wit:

"6. That the said clear valuations were correctly ascertained in levying or assessing of the tax."

XII.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defend-

ant's proposed finding number 6.

### XIII.

The Court erred in refusing to make defendant's proposed finding number 7, which is in the words and figures following, to wit:

"7. That in no case referred to in the complaint was any tax levied or assessed on any legacy or interest in property except upon the clear value thereof so correctly ascertained and that the amount of taxes collected was computed and determined in accordance with such clear valuation";

### XIV.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 7. [134]

### XV.

The Court erred in refusing to make defendant's proposed finding number 8, which is in the words and figures following, to wit:

"8. That the relationships sustained to the deceased by the persons named in the complaint to whom the legacies or interests therein mentioned passed were ascertained by the Collector and properly considered in computing the tax."

### XVI.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 8.

### XVII.

The Court erred in refusing to make defendant's proposed finding number 9, which is in the words and figures following, to wit:

“That the amount of taxes mentioned in the complaint was levied and assessed only in accordance with the clear value of the property on which the same was computed and in accordance with the relationship of the legatee, the passing of whose legacy interest was in fact taxed.”

XVIII.

The Court erred in finding the facts to be directly contrary to the matters set forth in the said defendant's proposed finding number 9.

XIX.

The Court erred in finding and determining in this case that plaintiffs were the owners of the claim and demand in suit.

XX.

The Court erred in finding and deciding that the plaintiffs had presented to the Collector of Internal Revenue any claim for a refunding of the taxes in question. [135]

XXI.

The Court erred in finding and determining that the plaintiffs and claimants did appeal to the Commissioner of Internal Revenue at Washington, District of Columbia, following the presentation of, or any ruling upon the presentation of any claim to the Collector of Internal Revenue at San Francisco, California, such claim being for the refunding of the taxes in suit.

XXII.

The Court erred in ruling that the Collector of Internal Revenue at San Francisco, California, caused a tax to be levied or assessed by reason of a

legacy or legacies described in the will of the deceased person mentioned in the complaint; the Court has found that such legacies were contingent and did not vest in possession or enjoyment at the time and particularly prior to the repeal on July 13th, 1902, of the War Revenue Act, under which the taxes were imposed; the finding and conclusion of the Court so made in favor of the plaintiffs was based upon the terms of the will of the deceased which left the legacy on account of which the tax was levied or assessed in trust for a certain period of time, at the end of which period the trust was to terminate and possession of the property had by the legatee; the defendant specifies that notwithstanding the possession of the legacies was postponed within the meaning of the statute, the legacy did pass in possession and enjoyment and particularly did pass in enjoyment, and that the legatee was given a vested beneficial interest in the property, and that the tax in question was levied upon only such interest in the property as was given to the legatee; a present valuation was fixed upon the property in view of the fact that the enjoyment and use of the *corpus* of the trust fund was postponed and the defendant [136] assigns as error the ruling of the Court that a clear valuation could not be affixed upon the quantity of interest which did in fact pass to the legatee whose interest was taxed.

### XXIII.

The defendant also specifies that it appears from the terms of the will that the legacy so taxed, although the same passed in trust, was an interest which

was the subject of sale and was capable of a clear valuation, and that clear valuation was in fact ascertained by the Collector of Internal Revenue in levying the tax.

XXIV.

The defendant also specifies that even though such legacy was not the subject of sale, nevertheless, the same was capable of a clear valuation which was in fact ascertained by the Collector of Internal Revenue in fixing the tax.

XXV.

The Court erred in finding that the Collector of Internal Revenue had determined the value of the legacy passing into the trust was the value of the property passing into the trust.

XXVI.

The Court erred in making Finding XI, as follows:

“That said income derived from said legacies above named, of the values above set out, to be held in trust as aforesaid, do not, nor does any one of them, amount to the sum of \$10,000 each year, or at all.”

XXVII.

The Court erred in finding that incomes derived from the legacies referred to in said Finding did not amount in any case to the sum of \$10,000.

XVIII.

The Court erred in finding and determining that the legacies under the will of John J. Valentine, on account of the passing of which the amounts of taxes mentioned in the complaint were [137] levied or

assessed, were contingent, and that the passing of the same was contingent.

#### XXIX.

The Court erred in finding and concluding that said legacies did not vest in possession or enjoyment.

#### XXX.

The Court erred in finding and concluding, in the case of each legatee, that the clear value of the legacy did not amount to the sum of \$10,000.

#### XXXI.

The Court erred in finding and concluding that the plaintiff was entitled to, and in rendering judgment for the sum of, \$1661, together with interest; and in finding and concluding that the plaintiff was entitled to judgment for any sum. [138]

### **Specifications of the Insufficiency of the Evidence to Sustain the Findings.**

The evidence was insufficient to sustain the finding of the Court in each case and in the case of each legacy involved in each case:

1. That the legacy did not pass in immediate possession or enjoyment;
2. That the legacy on account of the passing of which the tax was levied or assessed, was a contingent beneficial interest;
3. That the legacy on account of the passing of which the tax in question was levied or assessed, was not a vested legacy and did not vest prior to July 1st, 1902;
4. That the enjoyment or possession of the legacy was dependent upon and contingent upon some uncertain event;



5. That the possession or enjoyment of the legacy was contingent upon any event whatsoever;

6. That the clear value of the legacy on account of the passing of which the tax in question was levied or assessed was fixed by the Collector as the same as the clear value of the property compromised within such legacy;

7. That the legacy on account of which the tax was levied or assessed, was not a legacy capable of any clear valuation by the Collector of Internal Revenue, taking into consideration the fact that the property passed into the trust and the physical possession thereof was to be held by the trustees for a certain period;

8. That the clear valuation of the legacy was not correctly ascertained or fixed by the Collector of Internal Revenue; [139]

9. *The* the clear valuation of the legacy on account of the passing of which the tax was levied or assessed as fixed by the Collector of Internal Revenue was excessive.

Dated July 10, 1911.

ROBT. T. DEVLIN,  
United States Attorney,  
Attorney for Defendant.

[Endorsed]: Filed Jul. 10, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[140]

*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO,

Plaintiff,

vs.

AUGUST E. MUENTER, as Collector of the Internal Revenue of the United States for the 1st Collection District of California,

Defendant.

**Order Allowing Writ of Error.**

Upon motion of Robert T. Devlin, Esq., United States Attorney for the Northern District of California, attorney for the defendant in the above-entitled cause, and upon filing the petition for a writ of error and assignment of errors herein,—

IT IS HEREBY ORDERED that a writ of error be, and it is hereby allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the judgment heretofore rendered herein, and other matters and things in said petition and assignment set forth.

Dated July 10th, 1911.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jul. 10, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

No. 13,761.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), as Trustee Under the Trust Declared by the Last Will of JOHN J. VALENTINE, and EDWARD C. VALENTINE, DUDLEY B. VALENTINE, ELIZA R. VALENTINE, PHILIP C. VALENTINE, and J. J. VALENTINE, Jr., ETHEL STEIN VALENTINE and WILLIAM GEORGE VALENTINE,

Plaintiffs,

vs.

JOHN C. LYNCH, Collector of Internal Revenue for the First District of California,

Defendant.

**Clerk's Certificate to Record on Writ of Error.**

I, Southard Hoffman, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing one hundred and forty-one (141) pages, numbered from 1 to 141, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said Circuit Court, and that the same constitutes the return to the annexed writ of error.

I further certify that the cost of preparing and certifying the transcript of record on writ of error in this cause amounts to the sum of \$80.20; that said sum will be charged by me in my quarterly account against the United States, for the quarter ending September 30, 1911, and that the original writ of error and citation issued in said cause are hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 31st day of August, A. D. 1911.

[Seal]                      SOUTHARD HOFFMAN,  
Clerk of the United States Circuit Court, Ninth Ju-  
dicial Circuit, Northern District of California.

[142]

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[**Writ of Error (Original).**]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between August E. Muentner, as Collector of the Internal Revenue of the United States for the 1st Collection District of California, Plaintiff in Error, and The Union Trust Company of San Francisco, a corporation, as trustee, under the trust declared by the last Will of John J. Valentine, and Edward C.

Valentine, Ethel Stein Valentine, J. J. Valentine, William George Valentine, Dudley B. Valentine, Eliza R. Valentine, Philip C. Valentine, defendant in error, a manifest error hath happened to the great damage of the said August E. Muentner, as Collector of the Internal Revenue of the United States for the 1st Collection District of California, plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 9th day of August, 1911, next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 10th day of July, in the year of our Lord One Thousand Nine

Hundred and Eleven.

[Seal]                      SOUTHARD HOFFMAN,  
Clerk of the Circuit Court of the United States, for  
the Ninth Circuit, Northern District of Cali-  
fornia.

Allowed by

WM. C. VAN FLEET.

Judge. [143]

Service of within Writ and receipt of a copy thereof is hereby admitted this 11th day of July, 1911, without waiving any rights with reference to the Bill of Exceptions not having been settled and signed within the last term or proper or any assignment of error having been served and filed.

MARSHALL B. WOODWORTH,

Attorney for Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]                      SOUTHARD HOFFMAN,

Clerk.

[Endorsed]: No. 13,761. Circuit Court of the United States, Ninth Circuit, Northern District of



California. August E. Muentner, etc., Plaintiff in Error, vs. Union Trust Co. of S. F. et al., Defendant in Error. Writ of Error. Filed July 11th, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Citation (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to The Union Trust Company of San Francisco, a Corporation, as Trustee, Under the Trust declared by the Last Will of John J. Valentine, and Edward C. Valentine, Ethel Stein Valentine, J. J. Valentine, William George Valentine, Dudley B. Valentine, Eliza R. Valentine, Philip C. Valentine, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 9th day of August, 1911, being within thirty days from the date hereof, pursuant to a Writ of Error filed in the clerk's office of the Circuit Court of the United States, for the Northern District of California wherein August E. Muentner, Collector of Internal Revenue for the First Collection District of California, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done

to the parties in that behalf.

Witness, the Honorable WM. C. VAN FLEET,  
United States District Judge for the Northern Dis-  
trict of California, this tenth day of July, A. D.  
1911.

WM. C. VAN FLEET,  
United States District Judge. [144]

Service of within Citation, by copy, admitted this  
11th day of July, A. D. 1911, without waiving any  
rights with reference to the Bill of Exceptions not  
having been settled and signed within the last term  
or proper or any assignment of error having been  
served and filed.

MARSHALL B. WOODWORTH,  
Attorney for Defendant in Error.

[Endorsed]: No. 13,761. In the Circuit Court of  
the United States for the Ninth Circuit, Northern  
District of California. August E. Muentner, etc., vs.  
Union Trust Co. et al. Citation. Filed July 11th,  
1911. Southard Hoffman, Clerk. By J. A. Schaert-  
zer, Deputy Clerk.

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[Endorsed]: No. 2031. United States Circuit  
Court of Appeals for the Ninth Circuit. August E.  
Muentner, as Collector of Internal Revenue of the  
United States for the First Collection District of  
California, Plaintiff in Error, vs. The Union Trust  
Company of San Francisco (a Corporation), as  
Trustee, Under the Trust Declared by the Last Will  
of John J. Valentine, and Edward C. Valentine,  
Ethel Stein Valentine, J. J. Valentine, Jr., William

George Valentine, Dudley B. Valentine, Eliza R. Valentine and Philip C. Valentine, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the Northern District of California.

Filed August 31, 1911.

F. D. MONCKTON,  
Clerk.

By Meredith Sawyer,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

AUGUST E. MUENTER, etc.,  
Plaintiff in Error,

vs.

UNION TRUST COMPANY OF SAN FRAN-  
CISCO et al.,

Defendants in Error.

**Order Extending Time to File Record and Docket  
Cause.**

Good cause appearing therefor, it is ordered that the plaintiff in error in the above-entitled cause may have to and including September 6, 1911, within which to file the record on writ of error and to docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated August 7, 1911.

WM. C. VAN FLEET.

United States District Judge, Northern District of  
California.

[Endorsed]: No. 2031. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16, Section 1, Enlarging Time Within Which to File Record Thereof and to Docket Case to and inclg. Sept. 6, 1911. Filed Aug. 7, 1911. F. D. Monckton, Clerk. Refiled Aug. 31, 1911. F. D. Monckton, Clerk.